MISSISSIPPI CODE 1972
Annotated

Public Welfare

Title 43

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PUBLIC WELFARE

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME ELEVEN A

PUBLIC WELFARE

§§ 43-1-1 to 43-61-11

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2015 REGULAR SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

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Attorney General

PUBLISHER'S FOREWORD

This 2015 Replacement Volume 11A represents material appearing in both the original 1973 bound volume, the 2000 Replacement Volume 11A, and the 2004 Replacement Volume 11A, 2009 Replacement Volume 11A, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2015 Regular Session.

This volume contains the text of Title 43, of the Mississippi Code of 1972 Annotated, as amended through the 2015 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals with decision dates up to February 10, 2009, and decisions of the appropriate federal courts with decision dates up to December 23, 2009. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

PUBLISHER'S FOREWORD

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22906-5389.

September 2015 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
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— Source Notes
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— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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§ 43-1-1. Department of Human Services to be State Department of Public Welfare [Repealed effective July 1, 2019].

(1) The Department of Human Services shall be the State Department of Public Welfare and shall retain all powers and duties as granted to the State Department of Public Welfare. Wherever the term "State Department of Public Welfare" or "State Board of Public Welfare" appears in any law, the same shall mean the Department of Human Services. The Executive Director of Human Services may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the department.

(2) This section shall stand repealed on July 1, 2019.

SOURCES: Codes, 1942, § 7217; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1986, ch. 500, § 34; Laws, 1989, ch. 544, § 61; Laws, 1990, ch. 522, § 17; Laws, 1992, ch. 585 § 2; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 1; Laws, 2001, ch. 599, § 2; Laws, 2002, ch. 573, § 1; reenacted and amended, Laws, 2005, ch. 537, § 1; Laws, 2009, ch. 564, § 1; Laws, 2012, ch. 470, § 1; Laws, 2015, ch. 403, § 1, eff from and after July 1, 2015.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Amendment Notes — The 2015 amendment extended the repealer provision in (2) from "July 1, 2015" to "July 1, 2019."

Cross References — General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

Establishment of child support unit within Department of Human Services, see § 43-19-31.

Duties of Department of Human Services with respect to youth court, see §§ 43-21-257, 43-21-315, 43-21-353, 43-21-357, 43-21-607, 43-21-609.

Assistance by Department of Public Welfare in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

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JUDICIAL DECISIONS

1. In general.

Educational grant to employee of state department of public welfare for study in his field of work, held subject to Federal income tax. Ussery v. United States, 296 F.2d 582 (5th Cir. 1961).

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 12-18.

§ 43-1-2. Mississippi Department of Human Services; Executive Director of Human Services; Joint Oversight Committee; powers of executive director; structure of department [Repealed effective July 1, 2019].

(1) There is created the Mississippi Department of Human Services, whose offices shall be located in Jackson, Mississippi, and which shall be under the policy direction of the Governor.

(2) The chief administrative officer of the department shall be the Executive Director of Human Services. The Governor shall appoint the Executive Director of Human Services with the advice and consent of the Senate, and he shall serve at the will and pleasure of the Governor, and until his successor is appointed and qualified. The Executive Director of Human Services shall possess the following qualifications:

(a) A bachelor's degree from an accredited institution of higher learning and ten (10) years' experience in management, public administration, finance or accounting; or

(b) A master's or doctoral degree from an accredited institution of higher learning and five (5) years' experience in management, public administration, finance or accounting.

Those qualifications shall be certified by the State Personnel Board.

(3) There shall be a Joint Oversight Committee of the Department of Human Services composed of the respective Chairmen of the Senate Public Health and Welfare Committee, the Senate Appropriations Committee, the House Public Health and Human Services Committee and the House Appropriations Committee, three (3) members of the Senate appointed by the Lieutenant Governor to serve at the will and pleasure of the Lieutenant Governor, and three (3) members of the House of Representatives appointed by the Speaker of the House to serve at the will and pleasure of the Speaker. The chairmanship of the committee shall alternate for twelve-month periods between the Senate members and the House members, on May 1 of each year, with the Chairman of the Senate Public Health and Welfare Committee serving as chairman beginning in even-numbered years, and the Chairman of the House Public Health and Human Services Committee serving as chairman beginning in odd-numbered years. The committee shall meet once each quarter, or upon the call of the chairman at such times as he deems necessary or advisable, and may make recommendations to the Legislature pertaining to

any matter within the jurisdiction of the Mississippi Department of Human Services. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend such meetings of the oversight committee. For attending meetings of the oversight committee, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the committee will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the oversight committee without prior approval of the proper committee in their respective houses.

(4) The Department of Human Services shall provide the services authorized by law to every individual determined to be eligible therefor, and in carrying out the purposes of the department, the executive director is authorized:

(a) To formulate the policy of the department regarding human services within the jurisdiction of the department;

(b) To adopt, modify, repeal and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department's jurisdiction, all of which shall be binding upon the county departments of human services;

(c) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(d) Except as limited by Section 43-1-3, to enter into and execute contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the programs of the department; and

(e) To discharge such other duties, responsibilities and powers as are necessary to implement the programs of the department.

(5) The executive director shall establish the organizational structure of the Mississippi Department of Human Services which shall include the creation of any units necessary to implement the duties assigned to the department and consistent with specific requirements of law, including, but not limited to:

(a) Office of Family Children's Services;

(b) Office of Youth Services;

(c) Office of Economic Assistance;

(d) Office of Child Support Enforcement; or

(e) Office of Field Operations to administer any state or county level programs under the purview of the Mississippi Department of Human

Services, with the exception of programs which fall under paragraphs (a) and (b) above.

(6) The Executive Director of Human Services shall appoint heads of offices, bureaus and divisions, as defined in Section 7-17-11, who shall serve at the pleasure of the executive director. The salary and compensation of such office, bureau and division heads shall be subject to the rules and regulations adopted and promulgated by the State Personnel Board as created under Section 25-9-101 et seq. The executive director shall have the authority to organize offices as deemed appropriate to carry out the responsibilities of the department. The organization charts of the department shall be presented annually with the budget request of the Governor for review by the Legislature.

(7) This section shall stand repealed on July 1, 2019.

SOURCES: Laws, 1989, ch. 544, § 59; Laws, 1990, ch. 522, § 18; Laws, 1991, ch. 608, § 27; Laws, 1992, ch. 585 § 1; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 2; Laws, 1997, ch. 316, § 15; Laws, 2001, ch. 599, § 3; Laws, 2002, ch. 573, § 2; reenacted and amended, Laws, 2005, ch. 537, § 2; Laws, 2009, ch. 564, § 2; Laws, 2012, ch. 470, § 2; Laws, 2015, ch. 403, § 2, eff from and after July 1, 2015.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Laws of 1994, Ex Sess, ch. 22, § 6 provides as follows:

"SECTION 6. The Department of Human Services created by Section 2 of this act is a continuation of the Department of Human Services that existed on June 30, 1994, and the Joint Oversight Committee created by Section 2 of this act is a continuation of the Joint Oversight Committee that existed on June 30, 1994. Executive Order 753, issued June 24, 1994, shall have no force or effect from and after the effective date of this act, and the Department of Human Services created by Section 2 of this act supersedes the entity referred to in Executive Order 753 in all respects after the effective date of this act; however, all actions taken by the entity referred to in Executive Order 753 between June 30, 1994, and the effective date of this act that would have been lawful if they had been taken by the Department of Human Services as it existed on June 30, 1994, pursuant to the department's powers or duties as they existed on June 30, 1994, or pursuant to any powers or duties of the department provided for by any state law enacted during the 1994 Regular Session or any federal law or regulation that was in effect between June 30, 1994, and the effective date of this act, are retroactively ratified, confirmed and validated. In addition, all actions taken by the State Fiscal Officer, the State Treasurer and their respective employees between June 30, 1994, and the effective date of this act in connection with the expenditure by the entity referred to in Executive Order 753 of any of the funds appropriated to the Department of Human Services by House Bill 1760, 1994 Regular Session, are retroactively ratified, confirmed and validated. Nothing in this section shall be construed as ratifying any authority of the Governor to establish a state agency by Executive Order."

Laws of 2005, ch. 537, § 6 provides as follows:

"SECTION 6. The Department of Human Services created by Section 43-1-2 is a continuation of the Department of Human Services that existed on June 30, 2004, and the Joint Oversight Committee created by Section 43-1-2 is a continuation of the Joint

Oversight Committee that existed on June 30, 2004. It is the intention of Laws of 2005, Chapter 537, to resolve all issues and matters in the Order Appointing a Receiver for the Department of Human Services issued by the Chancery Court of the First Judicial District of Hinds County, Mississippi, in the case of State of Mississippi, Ex Rel. Jim Hood, Attorney General v. Haley Barbour, Governor, et al., Cause No. 62004-1170, and the Attorney General shall file appropriate motions in the chancery court to dismiss this case. Provided, however, all actions taken by the receivership referred to in said court order between June 30, 2004, and the April 21, 2005 that would have been lawful if they had been taken by the Department of Human Services as it existed on June 30, 2004, pursuant to the department's powers or duties as they existed on June 30, 2004, or pursuant to any powers or duties of the department provided for by any state law enacted during the 2004 or 2005 Regular Sessions or any federal law or regulation that was in effect between June 30, 2004, and April 21, 2005, are retroactively ratified, confirmed and validated. In addition, all actions taken by the State Fiscal Officer, the State Treasurer and their respective employees between June 30, 2004, and the effective date of this act in connection with the expenditure by the receivership referred to in said court order of any of the funds appropriated to the Department of Human Services by House Bill No. 1747, 2004 Regular Session, are retroactively ratified, confirmed and validated."

Laws of 2013, ch. 516, s. 1, provides:

"SECTION 1. (1) The purported conveyance of the real property described in subsection (2) of this section by the Mississippi Department of Human Services to the Marion County Economic Development District under the authority of Executive Order No. 2011-001 executed by Don Thompson, Executive Director of the Department of Human Services, on April 13, 2011, and the special warranty deed dated May 3, 2011, from the Department of Human Services to the Marion County Economic Development District, is ratified, approved, confirmed and validated. The special warranty deed appears in the land deed records in the Office of the Chancery Clerk of Marion County, Mississippi, in Book 1663 at pages 99 through 104, and Executive Order No. 2011-001 appears in the land deed records in the Office of the Chancery Clerk of Marion County, Mississippi, in Book 1663 at pages 105 through 107.

"(2) The real property referenced in subsection (1) of this section is described as follows:

[For a complete description of the property, see Section 1 of Chapter 516, Laws of 2013.]

"All four tracts contain in the aggregate, 370 acres, more or less."

Laws of 2013, ch. 516, s. 3, provides:

"SECTION 3. The real property conveyed under Sections 1 and 2 of this act [Ch. 516, Laws of 2013. Section 1 is noted under § 43-1-2. Section 2 is noted under § 43-27-39] shall be conveyed to the respective recipients without any assumption of liability or financial responsibility by the State of Mississippi for any known or unknown environmental defects contained thereon. The entities acquiring the properties indemnifies the State of Mississippi upon receipt of said properties. However, the Marion County Board of Supervisors, upon receipt of the deed of title to the real property described in Sections 1 and 2 of this act shall have the authority to harvest and sell any timber located on those parcels of real property transferred under those sections and shall use the revenue generated from such sale or sales to fund the costs associated with removal and containment of any environmental defects located thereon. Any revenue remaining from the sale of timber after all environmental clean up cost have been paid, shall be deposited into the general fund treasury of Marion County to be expended for any and all purposes deemed necessary by the board of supervisors."

Amendment Notes — The 2015 amendment extended the repealer provision in (7) from "July 1, 2015" to "July 1, 2019."

Cross References — Powers and duties of department, and executive director, with respect to rehabilitative services, see § 37-33-1 et seq.

Transfer of functions of State Department of Rehabilitation Services to this department, see § 37-33-153.

Transfer of functions, personnel, appropriations, etc., to Department of Rehabilitation Services, see § 37-33-201.

Transfer of certain programs of Division of Federal-State Programs to State Department of Human Services, see § 43-1-6.

Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

Transfer of functions of department of youth services to this department, see § 43-27-2.

JUDICIAL DECISIONS

1. Sovereign immunity.

In a 42 U.S.S.C. § 1983 case in which a mother sued the Mississippi Department of Human Services (MDHS) for removing her child from her custody pursuant to a court order, the Eleventh Amendment shielded MDHS and its workers, in their official capacities, from suit because MDHS was an arm of the state, being funded by the state under Miss. Code Ann. § 43-1-2. Stewart v. Jackson County, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 95207 (S.D. Miss. Oct. 24, 2008), affirmed by 369 Fed. Appx. 593, 2010 U.S. App. LEXIS 5393 (5th Cir. Miss. 2010).

ATTORNEY GENERAL OPINIONS

Section 43-1-2 gives no authority to the Mississippi Department of Human Services to offer cash incentives to individuals who provide information leading to the location of nonsupporting parents. Taylor, September 6, 1996, A.G. Op. #96-0516.

§ 43-1-3. Delegation, privatization, or contracting with private entity for operation of office, bureau or division of department prohibited; contracts for improvement of performance or efficiency of services authorized [Repealed effective July 1, 2019].

Notwithstanding the authority granted under subsection (4)(d) of Section 43-1-2, the Department of Human Services or the Executive Director of Human Services shall not be authorized to delegate, privatize or otherwise enter into a contract with a private entity for the operation of any office, bureau or division of the department, as defined in Section 7-17-11, without specific authority to do so by general act of the Legislature. However, nothing in this section shall be construed to invalidate (i) any contract of the department that is in place and operational before January 1, 1994; or (ii) the continued renewal of any such contract with the same entity upon the expiration of the contract; or (iii) the execution of a contract with another legal entity as a replacement of any such contract that is expiring, provided that the replacement contract is substantially the same as the expiring contract. Nothing in this section shall prohibit the Department of Human Services or the Executive Director of Human Services from entering into any contract with vendors or contractors intended to improve performance, reduce costs or increase efficiency, so long as the contract remains under the supervision or control of an office, bureau or division of the department, and provided that no county office of the department may be closed unless the Legislature specifically authorizes its closure in advance of the closure.

This section shall stand repealed on July 1, 2019.

SOURCES: Laws, 1994, Ex Sess, ch. 22, § 3; Laws, 2001, ch. 599, § 4; Laws, 2002, ch. 573, § 3; reenacted and amended, Laws, 2005, ch. 537, § 3; Laws, 2009, ch. 564, § 3; Laws, 2012, ch. 470, § 3; Laws, 2013, ch. 515, § 1; Laws, 2015, ch. 403, § 3, eff from and after July 1, 2015.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

The provisions of this section formerly appeared as a note following § 43-1-2 and were reclassified as § 43-1-3 pursuant to direction of the Revisor of Statutes.

A prior § 43-1-3 [Codes, 1942, § 7218; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1948, ch. 406, § 1; Laws, 1958, ch. 537; Laws, 1968, ch. 562, § 2; Laws, 1980, ch. 560, § 18; Laws, 1983, ch. 504, § 1; Laws, 1986, ch. 500, § 35] was repealed by Laws of 1989, ch. 544, § 64, effective from and after July 1, 1989. That section created the state board of public welfare.

Amendment Notes — The 2015 amendment extended the repealer provision in the last paragraph from "July 1, 2015" to "July 1, 2019."

§ 43-1-4. Powers and duties of department.

The Department of Human Services shall have the following powers and duties:

(a) To provide basic services and assistance statewide to needy and disadvantaged individuals and families.

(b) To promote integration of the many services and programs within its jurisdiction at the client level thus improving the efficiency and effectiveness of service delivery and providing easier access to clients.

(c) To develop a statewide comprehensive service delivery plan in coordination with the Board of Health, the Board of Mental Health, and the Department of Finance and Administration. Such plan shall be developed and presented to the Governor by January 1, 1990.

(d) To employ personnel and expend funds appropriated to the department to carry out the duties and responsibilities assigned to the department by law.

(e) To fingerprint and perform a criminal history record check on every employee or volunteer (i) who has direct access to clients of the department who are children or vulnerable adults, or (ii) who is in a position of fiduciary responsibility. Every such employee and volunteer shall provide a valid current social security number and or driver's license number which shall be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check.

SOURCES: Laws, 1989, ch. 544, § 60; Laws, 2005, ch. 431, § 1, eff from and after July 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (e). In clause (ii), "who is" was substituted for "who are." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — Duty of department to review appropriateness of child support award guidelines, see § 43-19-101.

§ 43-1-5. Duties of department [Repealed effective July 1, 2019].

It shall be the duty of the Department of Human Services to:

(1) Establish and maintain programs not inconsistent with the terms of this chapter and the rules, regulations and policies of the Department of Human Services, and publish the rules and regulations of the department pertaining to such programs.

(2) Make such reports in such form and containing such information as the federal government may, from time to time, require, and comply with such provisions as the federal government may, from time to time, find necessary to assure the correctness and verification of such reports.

(3) Within ninety (90) days after the end of each fiscal year, and at each regular session of the Legislature, make and publish one (1) report to the Governor and to the Legislature, showing for the period of time covered, in each county and for the state as a whole:

(a) The total number of recipients;

(b) The total amount paid to them in cash;

(c) The maximum and the minimum amount paid to any recipients in any one (1) month;

(d) The total number of applications;

(e) The number granted;

(f) The number denied;

(g) The number cancelled;

(h) The amount expended for administration of the provisions of this chapter;

(i) The amount of money received from the federal government, if any;

(j) The amount of money received from recipients of assistance and from their estates and the disposition of same;

(k) Such other information and recommendations as the Governor may require or the department shall deem advisable;

(*l*) The number of state-owned automobiles purchased and operated during the year by the department, the number purchased and operated out of funds appropriated by the Legislature, the number purchased and operated out of any other public funds, the miles traveled per automobile, the total miles traveled, the average cost per mile and depreciation estimate on each automobile;

(m) The cost per mile and total number of miles traveled by department employees in privately owned automobiles, for which reimbursement is made out of state funds;

(n) Each association, convention or meeting attended by any department employees, the purposes thereof, the names of the employees attending and the total cost to the state of such convention, association or meeting;

(o) How the money appropriated to the institutions under the jurisdiction of the department has been expended during the preceding year, beginning and ending with the fiscal year of each institution, exhibiting the salaries paid to officers and employees of the institutions, and each and every item of receipt and expenditure;

(p) The activities of each office within the Department of Human Services and recommendations for improvement of the services to be performed by each division.

Each report shall be balanced and shall begin with the balance at the end of the preceding fiscal year, and if any property belonging to the state or the institution is used for profit, such report shall show the expenses incurred in managing the property and the amount received from the same. Such reports shall also show a summary of the gross receipts and gross disbursements for each fiscal year and shall show the money on hand at the beginning of the fiscal period of each division and institution of the department.

This section shall stand repealed on July 1, 2019.

SOURCES: Codes, 1942, § 7219; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1946, ch. 331, § 1; Laws, 1950, ch. 527; Laws, 1952, ch. 388, § 1; Laws, 1954, ch. 355, § 1; Laws, 1958, ch. 349; Laws, 1966, ch. 445, § 21; Laws, 1983, ch. 504, § 2; Laws, 1989, ch. 544, § 63; Laws, 1990, ch. 522, § 19; Laws, 1991, ch. 434, § 1; Laws, 1992, ch. 585, § 3; Laws, 1992, ch. 523, § 1; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 4; Laws, 2001, ch. 599, § 5; Laws, 2002, ch. 573, § 4; reenacted and amended, Laws, 2005, ch. 537, § 4; Laws, 2009, ch. 564, § 4; Laws, 2012, ch. 470, § 4; Laws, 2015, ch. 403, § 4, eff from and after July 1, 2015.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Amendment Notes — The 2015 amendment extended the repealer provision in the last paragraph of this section from "July 1, 2015" to "July 1, 2019."

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Adjustment center for the blind, see §§ 43-3-1 et seq.

Statewide program for aid to the blind, see §§ 43-3-51 et seq.

Governance and duties with respect to Mississippi Industries for the Blind, see § 43-3-103.

Old age assistance program, see §§ 43-9-1 et seq.

Medical assistance for the aged, see §§ 43-13-1 et seq.

Medicaid program, see §§ 43-13-101 et seq.

Child welfare program, see §§ 43-15-1 et seq.

Aid to dependent children, see §§ 43-17-1 et seq.

Aid for persons with disabilities, see §§ 43-29-1 et seq.

RESEARCH REFERENCES

ALR. Confidentiality of records as to recipients of public welfare. 54 A.L.R.3d 768.

§ 43-1-6. Repealed.

Repealed by its own terms, effective July 1, 2012.

§ 43-1-6. [Laws, 1989, ch. 544, § 103; Laws, 1992, ch. 585 § 4; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 5; Laws, 2001, ch. 599, § 6; Laws, 2002, ch. 573, § 5; reenacted and amended, Laws, 2005, ch. 537, § 5; Laws, 2009, ch. 564, § 5, eff from and after June 30, 2009.]

Editor's Note — Former § 43-1-6 provided for the transfer of certain programs within the Division of Federal-State Programs, Office of the Governor, to the Department of Human Services.

§ 43-1-7. Family resource centers; information campaign for low income individuals; telephone hotline for reporting welfare fraud.

(1) The Department of Human Services may establish family resource centers to help families who are receiving or are eligible to receive assistance from government agencies to facilitate their access to services and resources that will lead to increased family independence.

(2) The department shall carry out an intense public information campaign to inform low-income workers, and especially public assistance recipients, of the availability of and application rules for the federal Earned Income Tax Credit (EITC), in order to maximize the refund of federal income tax withheld from those persons. The information campaign shall include publishing and circulating bulletins or notices to recipients of Temporary Assistance for Needy Families (TANF) benefits and other public assistance that publicize and explain the EITC and the criteria for family eligibility for the EITC. The department also shall carry out an intense information campaign to inform employers of the availability of and the criteria for eligibility for the Work Opportunity Tax Credit (WOTC), which offers employers a credit against their federal tax liability for hiring people from certain target groups, including TANF recipients, and to inform employers of the availability of and the criteria for eligibility for the state income tax credit for employers who hire persons receiving TANF benefits as authorized under Section 27-7-22.1.

(3) The department shall establish and maintain a statewide incoming wide area telephone service hot line for the purpose of reporting suspected cases of welfare eligibility fraud, food stamp fraud and Medicaid fraud. The department is authorized, subject to the extent of appropriations available, to offer financial incentives to individuals for reporting such suspected cases of public assistance fraud.

(4) Any applicant for or recipient of TANF benefits or Food Stamps shall be required to agree that, as a condition of eligibility for those benefits, the person will cooperate with the department in determining paternity for the purposes of enforcing child support obligations. The department shall utilize methods and procedures provided for by state or federal law in determining paternity and enforcing child support obligations.

SOURCES: Laws, 1997, ch. 316, § 21, eff from and after passage (approved March 12, 1997).

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

A former § 43-1-7 [Codes, 1942, § 7220; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1983. ch. 504, § 3; repealed by Laws, 1989, ch. 544, § 62, eff from and after July 1, 1989] pertained to the state commissioner of public welfare, his duties, powers and authority.

Section 27-7-22.1 referred to in § 43-1-7 was repealed by operation of law on January 1, 1999, by Laws of 1997, ch. 316, § 22.

Cross References — Fraud investigation unit, see § 43-1-23.

Temporary Assistance to Needy Families (TANF) program, see §§ 43-17-1 et seq.

§ 43-1-8. Repealed.

Repealed by Laws, 1994, ch. 582, § 8, eff from and after July 1, 1994. [Laws, 1993, ch. 614, § 12]

Editor's Note — Former § 43-1-8 was entitled: Bulletin advising AFDC recipients and others of federal income tax earned income credits.

§ 43-1-9. County department of public welfare.

There shall be created in each county of the state a county department of public welfare which shall consist of a county director of public welfare, and such other personnel as may be necessary for the efficient performance of the duties of the county department. It shall be the duty of the board of supervisors of each county to provide office space for the county department.

County director. The commissioner shall designate, in accordance with the rules and regulations of the State Personnel Board, with the approval of the Governor, a county director of public welfare who shall serve as the executive and administrative officer of the county department and shall be responsible to the state department for its management. Such director shall be a resident citizen of the county and shall not hold any political office of the state, county, municipality or subdivision thereof. However, in cases of emergency, the commissioner may appoint a director of public welfare who is a nonresident of such county, to serve during the period of emergency only.

The county department of public welfare shall administer within the county all forms of public assistance and welfare services. The county department shall comply with such regulations and submit such reports as may be established or required by the state department. Subject to the approval of the state department, the county department may cooperate with other departments, agencies and institutions, state and local, when so requested, in performing services in conformity with the provisions of this chapter.

In counties having two (2) judicial districts, the state commissioner of public welfare may create and establish in each of the judicial districts a separate county department of public welfare which shall consist of a director of public welfare and such other personnel as may be necessary for the efficient performance of the duties of the department thus established. In such cases the two (2) departments so established shall be dealt with as though each is a separate and distinct county department of public welfare, and each of the departments and each of the directors shall operate and have jurisdiction coextensive with the boundaries of the judicial district in which it is established; and, also, in such cases the words "county" and "director of public welfare" when used in this chapter shall, where applicable, mean each judicial district, and the director of public welfare appointed therefor; and where the board of supervisors is authorized to appropriate funds or provide office space or like assistance for one (1) county welfare department or director, such board may, as the case may be, appropriate the amount specified by law or render the assistance required by law to each of the departments or directors. Provided, however, that the commissioner of public welfare shall not create and establish a separate county department of public welfare pursuant to this paragraph in any county in which such separate county department of public welfare is not in existence on January 1, 1983. Provided further, that in any county having two (2) county departments of public welfare on January 1, 1983, but only one (1) county director of public welfare on said date, the commissioner of public welfare shall not authorize and establish the second position of county director of public welfare in such county.

In any county not having two (2) judicial districts which is greater than fifty (50) miles in length, the commissioner of public welfare may establish one (1) branch office of the county department of public welfare which shall be staffed with existing employees and administrative staff of such county department for not less than four (4) days per week.

SOURCES: Codes, 1942, § 7221; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1946, ch. 233, § 1; Laws, 1958, ch. 333; Laws, 1958, ch. 538; Laws, 1968, ch. 563, § 1; Laws, 1970, ch. 503, § 2; Laws, 1983, ch. 504, § 4; Laws, 1984, ch. 442, eff from and after July 1, 1984.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Duties of county departments under program for aid to blind persons, see § 43-3-61.

Providing protective services under child welfare program, see § 43-15-7.

Duties of county departments as to temporary assistance to needy families, see § 43-17-9.

Powers and duties of public welfare department with respect to restitution centers, see § 99-37-21.

ATTORNEY GENERAL OPINIONS

Pursuant to Sections 19-9-1, 43-1-9, 43-1-11, a county is authorized to borrow money in an amount not exceeding the limit imposed by Section 17-21-51 for the purpose of erecting a county building to house the local county Department of Human Services. Trapp, February 15, 1995, A.G. Op. #95-0022.

RESEARCH REFERENCES

ALR. Confidentiality of records as to recipients of public welfare. 54 A.L.R.3d 768.

§ 43-1-10. Repealed.

Repealed by Laws, 1994, ch. 582, § 8, eff from and after July 1, 1994. [Laws, 1993, ch. 614, § 14]

Editor's Note — Former § 43-1-10 was entitled: Telephone service for reporting welfare, food stamp and medicaid fraud; authorization to offer rewards. For present similar provisions, see § 43-1-7.

§ 43-1-11. Expenses of county welfare office.

The boards of supervisors of the various counties of this state are hereby authorized and empowered, in their discretion, to expend and appropriate such sums as they deem necessary out of any available county funds for the purpose of providing office space for the local county department of public welfare. This includes, but is not limited to, adequate office space for the efficient conduct of business, as well as providing for payment of electricity, water, gas, maintenance and repair of the building, and janitorial services and supplies.

SOURCES: Codes, 1942, § 7223; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1948, ch. 407, § 1; Laws, 1956, ch. 187; Laws, 1982, ch. 319, eff from and after October 1, 1982.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

ATTORNEY GENERAL OPINIONS

In event that county chose not to fund or was unable to fund various office expenditures for county department of human services, Mississippi Department of Human Services has responsibility to attempt to find funds to provide those services to office. Chaffin, March 31, 1994, A.G. Op. #94-0139.

Pursuant to Sections 19-9-1, 43-1-9, 43-1-11, a county is authorized to borrow money in an amount not exceeding the limit imposed by Section 17-21-51 for the purpose of erecting a county building to house the local county Department of Human Services. Trapp, February 15, 1995, A.G. Op. #95-0022.

A county board of supervisors may only establish and construct a jail upon land owned by the county itself in fee simple, and may not establish and construct a jail upon land belonging to an economic development district even though the economic development district was created by and is a subdivision of the county. Smith, April 7, 2000, A.G. Op. #2000-1080.

§ 43-1-12. Expenditure of municipal or county funds to support public welfare programs.

The governing authority of any municipality or county in this state is authorized and empowered, in its discretion, to expend such funds as it deems necessary and desirable, from any available funds of the municipality or county, to: (a) match any state, federal or private funds available for any program administered by the State Department of Public Welfare or the county departments of public welfare in this state; and/or (b) make a voluntary contribution to any such program.

SOURCES: Laws, 1989, ch. 407, § 1, eff from and after July 1, 1989.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

ATTORNEY GENERAL OPINIONS

In event that county chose not to fund or was unable to fund various office expenditures for county department of human services, Mississippi Department of Human Services has responsibility to attempt to find funds to provide those services to office. Chaffin, March 31, 1994, A.G. Op. #94-0139.

§ 43-1-13. Political activity.

(1) Except as otherwise provided in subsection (2) of this section, it shall be unlawful for a commissioner or any other employee of the state or county welfare departments to take an active part in any partisan political campaign. For violation of this provision the offending party shall be removed from office and in addition thereto, upon conviction, shall be guilty of a misdemeanor, subject to a fine of not more than Two Hundred Dollars ($200.00).

(2) This section shall not preclude an individual from seeking elective office where the office sought is nonpartisan and is not within the judicial branch of government.

SOURCES: Codes, 1942, § 7222; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 2010, ch. 439, § 1, eff from and after July 7, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

By letter dated July 7, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment to this section by Laws of 2010, ch. 439, § 1.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 43-1-15. Office of State Department.

The state capitol commission shall furnish office space for the State Department in the city of Jackson and is authorized to rent suitable quarters in the city in the event there is not sufficient room in one of the state houses. In case it is necessary to rent such quarters, the cost of such rental, janitorial service, fuel and janitor's supplies shall not be counted in determining the administrative cost limitation of Section 43-9-37, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 7224; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-1-17. Cooperation with the federal government.

The state department of public welfare shall cooperate with the federal government, its agencies and instrumentalities, in carrying out the provisions of any federal acts concerning public welfare, and in other matters of mutual concern pertaining to public welfare, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of plans for public assistance and welfare services in accordance with the provisions of the federal Social Security Act, as amended. It shall also cooperate with other departments, agencies and institutions, federal, state and local or private, when so requested, in performing services in conformity with the provisions of this chapter and Chapter 9 of this title.

SOURCES: Codes, 1942, § 7238; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1968, ch. 562, § 6, eff from and after passage (approved July 30, 1968).

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

RESEARCH REFERENCES

Law Reviews. Legislator Guilty of Misdemeanor if He Has Direct Interest in Contract Authorized by Legislature. 52 Miss. L. J. 659, September 1982.

§ 43-1-19. Disclosure of records of disbursement and payment of public assistance governed by federal regulations; penalty for violation.

(1) The records of the disbursement of funds or payments to recipients of any and all assistance under programs administered by the state or county departments of human services showing the names of the recipients and the amount of the individual assistance checks shall only be disclosed pursuant to federal regulations regarding disclosure of information for Temporary Assistance for Needy Families (TANF) and Food Stamp Act programs, and federal laws regarding use of electronically exchanged data.

(2) Any person, firm, corporation, association or agency who or which shall violate any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment in the discretion of the court.

SOURCES: Codes, 1942, § 7219.5; Laws, 1952, ch. 388, § 2; Laws, 1994, ch. 451, § 1; Laws, 1997, ch. 316, § 16, eff from and after passage (approved March 12, 1997).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (2) of this section. The words "Any person, firm, corporation, association of agency" have been changed to "Any person, firm, corporation, association or agency." The Joint Committee ratified the correction at its June 29, 2000 meeting.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Temporary Assistance to Needy Families (TANF) program, see §§ 43-17-1 et seq.

Federal Aspects — Federal Food Stamp Act, see 7 USCS §§ 2011 et seq.

§ 43-1-21. Disposal of abandoned applications, closed case files, and the like.

The state board of public welfare may, in its discretion, destroy or cause to be destroyed, or otherwise disposed of, any and all abandoned applications, closed case files, communications, information, memoranda, records, reports, paid checks, and files, in the office of the state department of public welfare when and as they become three (3) or more completed fiscal years old and which, in the opinion of the state board of public welfare, are no longer useful or necessary.

SOURCES: Laws, 1948, ch. 404; Laws, 1964, ch. 445.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

The State Attorney General, pursuant to authority granted by Laws of 1972, ch. 394, § 5, on September 25, 1973, directed that Chapter 404 of the Laws of 1948, as amended by Chapter 445 of the Laws of 1964, be inserted into the Code of 1972.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-1-23. Fraud investigation unit; duties; staff; assistance from and to other agencies; issuance of subpoenas.

(1) There is created within the State Department of Human Services a separate administrative unit to be known as the "Fraud Investigation Unit." The Fraud Investigation Unit shall be headed by a director appointed by the Executive Director of the department. The Director of the Fraud Investigation

Unit shall be a person who is knowledgeable in the programs administered by the department. The Fraud Investigation Unit shall be responsible for:

(a) Conducting investigations for the purpose of aiding the department in the detection of and verification of the perpetration of fraud or abuse of any program by any client, any vendor of services with whom the department has contracted or any employee of the department, and for the aiding of the department in the recoupment of any funds owed to the department as a result of fraud or abuse;

(b) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority and assisting in the prosecution of any case referred to a prosecutor, if requested; and

(c) Such other duties as prescribed in regulations of the department.

(2) The Fraud Investigation Unit is authorized to employ such other investigative, technical, secretarial and support staff as may be necessary.

(3) In order to carry out the responsibilities of the Fraud Investigation Unit, the investigators may request and receive assistance from all state and local agencies, boards, commissions, and bureaus including, without limitation, the State Tax Commission, the Department of Public Safety, and all public and private agencies maintaining data banks, criminal or other records that would enable the investigators to make verification of fraud or abuse in violation of state or federal statutes. All records and information shall be confidential and shall be available only to the Fraud Investigation Unit, district or county attorneys, the Attorney General, and courts having jurisdiction in criminal proceedings.

(4) The department is authorized to enter into contracts with other agencies administering aid or benefits or services under any state or federally funded assistance program which need the assistance of the department's Fraud Investigation Unit.

(5) To accomplish the objectives and to carry out the duties prescribed in this section, the executive director, or his designee, in addition to the powers conferred by this section, may issue subpoenas with the approval of, and returnable to, a judge of the circuit, county or chancery court, in termtime or in vacation, to examine the records, documents or other evidence of persons, firms, corporations or any other entities insofar as such records, documents or other evidence relate to dealings material to an investigation.

SOURCES: Laws, 1981, ch. 530, § 2; Laws, 1994, ch. 582, § 7; Laws, 1999, ch. 440, § 1, eff from and after July 1, 1999.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State

Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Telephone hotline for reporting welfare fraud, see § 43-1-7.

Crime of fraud in connection with state or federally funded assistance programs, see § 97-19-71.

RESEARCH REFERENCES

ALR. Fraud: criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare or similar welfare program for providing medical services. 50 A.L.R.3d 549.

Am Jur. 32 Am. Jur. 2d, False Pretenses §§ 77-79.

79 Am. Jur. 2d, Welfare Laws §§ 111, 112.

§ 43-1-25. Assistant prosecutors for prosecution of fraud in connection with assistance programs; investigation and prosecution costs to be subsidized.

All political subdivisions of the state, or combinations of political subdivisions, are authorized to employ assistant prosecutors to prosecute for the crimes under Section 97-19-71 and the state department of public welfare is authorized to contract with any political subdivision to subsidize payment for the reasonable and necessary cost of prosecutions and investigations in any program where federal matching funds are available.

SOURCES: Laws, 1981, ch. 530, § 3, eff from and after July 1, 1981.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

RESEARCH REFERENCES

ALR. Fraud: criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare or similar welfare program for providing medical services. 50 A.L.R.3d 549.

Am Jur. 32 Am. Jur. 2d, False Pretenses §§ 77-79.

79 Am. Jur. 2d, Welfare Laws §§ 111-112.

§ 43-1-27. Action maintainable by department of public welfare to recover benefits wrongfully obtained; attorney's fees; evidence.

(1) Any sums paid to or on behalf of any person, entity or subgrantee or the value of any aid or benefit or services obtained or received under any state or federally funded assistance program as a result of any false statement, misrepresentation, concealment of a material fact, failure to disclose assets, or by whatever means, becomes a debt due to the state department of public welfare. The amount of value of any assistance shall be recoverable from the recipient or his estate in a civil action brought in the name of the state department of public welfare pursuant to this section. In the event such action is brought, the department shall be entitled to recover, in addition to the amount of assistance, a reasonable amount of attorney's fees and its cost incurred therein. Where an attorney from the county attorney's office represents the department in such action, the attorney's fee awarded shall be for the use and benefit of that particular office and shall be forwarded to that office upon receipt by the department.

(2) In any civil action for the recovery of the amount of value of any aid or benefits or services improperly paid to the recipient, proof that a conviction or guilty plea on a misdemeanor or felony charge under Section 97-19-71 shall be deemed prima facie evidence that such assistance was improperly obtained under the provision of this section.

(3) Repayment of the assistance improperly obtained pursuant to this section shall not constitute a defense to or ground of dismissal of criminal charges brought under Section 97-19-71.

For purposes of this and other related sections, any food stamp and coupons issued under a food stamp plan administered by the state department of public welfare shall conclusively be the property of the State of Mississippi.

SOURCES: Laws, 1983, ch. 408, §§ 1-4, eff from and after passage (approved March 25, 1983).

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

RESEARCH REFERENCES

ALR. Violations and enforcement of Food Stamp Act of 1964 (7 USCS §§ 2011 et seq.), 120 A.L.R. Fed. 331.

§ 43-1-28. Online electronic benefit transfer (EBT) system for food stamps; pilot project; federal approval and funding.

(1) The Department of Human Services shall develop an online electronic benefit transfer (EBT) system for the food stamp program in Mississippi as an alternative to issuing food stamp coupons. The EBT system developed by the department under this section shall (a) provide that food stamp benefits are stored in and issued from a central computer data base and are electronically accessed by households at the point of sale through the use of reusable magnetic-stripe plastic cards; and (b) meet all requirements and standards specified in 7 USCS Section 2016(i) and the rules and regulations issued under that provision for approval by the Secretary of the United States Department of Agriculture.

(2) The department shall develop the EBT system and shall submit an application to the Secretary of the United States Department of Agriculture for approval of the system. After the EBT system has been approved, the department shall implement and operate the system as a pilot project in a county selected by the department. After the pilot project has been evaluated and approved by the United States Department of Agriculture, and subject to the availability of funds specifically appropriated therefor, the system may be expanded statewide at a rate determined by the Executive Director of the Department of Human Services. The system shall be expanded and implemented statewide not later than October 1, 2002.

(3) The department shall seek to obtain the maximum amount of federal financial participation available to fund the cost of administering the EBT system.

(4) The Department of Human Services may develop an on-line electronic benefit transfer (EBT) system for the Temporary Assistance for Needy Families (TANF) program in Mississippi as an alternative to issuing cash or voucher payments. The EBT system developed by the department under this section shall (a) provide that TANF benefits are stored in and issued from a central computer data base and are electronically accessed; and (b) meet all requirements and standards specified in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), and the rules and regulations issued under that act. The department shall seek to obtain the maximum amount of federal financial participation available to fund the cost of administering the EBT system for TANF payments.

(5) In order to facilitate the acquisition and deployment of EBT products and services in Mississippi, the Department of Human Services (DHS) and the Mississippi Department of Information Technology Services (MDITS), at their discretion, may utilize EBT agreements from other states and/or multistate coalition agreements that allow other states to acquire EBT products and services. After going through the approved ITS bidding process and the state is unable to acquire an EBT contract, DHS and ITS may negotiate an EBT contract with any vendor who meets DHS and ITS, EBT requirements.

SOURCES: Laws, 1993, ch. 383, § 1; Laws, 1994, ch. 374, § 1; Laws, 1997, ch. 316, § 19; Laws, 1999, ch. 324, § 1; Laws, 2000, ch. 494, § 1; Laws, 2001, ch. 338, § 1, eff from and after passage (approved Mar. 11, 2001.)

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — Temporary Assistance to Needy Families (TANF) program, see §§ 43-17-1 et seq.

RESEARCH REFERENCES

ALR. Construction and application of Food Stamp Act of 1964 (7 USCS §§ 2011 et seq.) establishing food stamp program. 13 A.L.R. Fed. 369.

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 27-29.

§ 43-1-29. Offline electronic benefit transfer (EBT) system for food stamps; demonstration project; federal approval and funding.

(1) The Department of Human Services shall develop an offline electronic benefit transfer (EBT) system for the food stamp program in Mississippi as an alternative to issuing food stamp coupons. The EBT system developed by the department under this section shall (a) provide that food stamp benefits are encoded on computer microchips embedded in reusable plastic cards (intelligent benefit cards) and are electronically accessed by households at the point of sale through the use of such cards; and (b) meet all requirements and standards specified in 7 USCS Section 2026(f) and the rules and regulations issued under that provision for approval by the Secretary of the United States Department of Agriculture as a demonstration project.

(2) The department shall finish development of the EBT system no later than November 1, 1993, and shall submit an application to the Secretary of the United States Department of Agriculture for approval to operate the system as a demonstration project. If the EBT system is approved as a demonstration project, the department shall implement and operate the system in one (1) county selected by the department. After the demonstration project has been in operation for one (1) year, the department shall evaluate the EBT system and report to the Legislature on the operation of the system.

(3) The department shall seek to obtain the maximum amount of federal financial participation available to fund the cost of administering the EBT system.

SOURCES: Laws, 1993, ch. 383, § 2, eff from and after July 1, 1993.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

RESEARCH REFERENCES

ALR. Construction and application of Food Stamp Act of 1964 (7 USCS §§ 2011 et seq.) establishing food stamp program. 13 A.L.R. Fed. 369.

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 27-29.

§ 43-1-29.1. Department of Human Services authorized to develop pilot program to track usage of Supplemental Nutritional Assistance Program benefits.

The Department of Human Services, is authorized, in its discretion, to develop a pilot program to track recipients of assistance under the Supplemental Nutritional Assistance Program (SNAP), formerly known as the Food Stamp Program. The tracking pilot program, if established, shall:

(a) Track the recipients' usage of SNAP benefits from the time they first receive the benefits, the length of time that they receive the benefits, when they terminate participation in the SNAP program, and patterns of usage while receiving the benefits.

(b) Follow the recipients after termination of participation in the SNAP program, to the extent feasible, to attempt to discover the paths that they take after leaving the SNAP program and the patterns of return to the SNAP program, including the factors that may influence these paths and patterns.

(c) On or before December 1 of each year, the Department of Human Services shall provide summaries of the information obtained under the tracking pilot program during the previous fiscal year to the Speaker of the House of Representatives, the Lieutenant Governor, and the Chairmen of the House Public Health and Human Services Committee, the Senate Public Health and Welfare Committee, the House Medicaid Committee and the House Select Committee on Poverty, and shall provide more detailed information to any of those persons upon request.

SOURCES: Laws, 2010, ch. 469, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section's subsection designations by deleting the subsection (1) designation from the introductory paragraph. The Joint Committee ratified the correction at its August 17, 2015, meeting.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

§ 43-1-30. Mississippi TANF Implementation Council [Repealed effective July 1, 2019].

(1) There is created the Mississippi TANF Implementation Council. It shall serve as the independent, single state advisory and review council for assuring Mississippi's compliance with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), as amended. The council shall further cooperation between government, education and the private sector in meeting the needs of the TANF program. It shall also further cooperation between the business and labor communities, education and training delivery systems, and between businesses in developing highly skilled workers for high skill, high paying jobs in Mississippi.

(2) The council shall be comprised of thirteen (13) public members and certain ex officio nonvoting members. All public members of the council shall be appointed as follows by the Governor:

Ten (10) members shall be representatives from business and industry, provided that no fewer than five (5) members are from the manufacturing and industry sector who are also serving as members of private industry councils established within the state, and one (1) member may be a representative of a nonprofit organization. Three (3) members shall be recipients or former recipients of TANF assistance appointed from the state at large.

The ex officio nonvoting members of the council shall consist of the following, or their designees:

(a) The Executive Director of the Mississippi Department of Human Services;

(b) The Executive Director of the Mississippi Department of Employment Security;

(c) The Executive Director of the Mississippi Development Authority;

(d) The State Superintendent of Public Education;

(e) The Director of the Mississippi Community College Board;

(f) The Executive Director of the Division of Medicaid;

(g) The Commissioner of the Mississippi Department of Corrections; and

(h) The Director of the Mississippi Cooperative Extension Service.

(3) The Governor shall designate one (1) public member to serve as chairman of the council for a term of two (2) years and until a successor as chairman is appointed and qualified.

(4) The term of office for public members appointed by the Governor shall be four (4) years and until their successors are appointed and qualified.

(5) Any vacancy shall be filled for the unexpired term by the Governor in the manner of the original appointment, unless otherwise specified in this section.

(6) Public members shall receive a per diem as authorized in Section 25-3-69, for each day actually engaged in meetings of the council, and shall be reimbursed for mileage and necessary expenses incurred in the performance of their duties, as provided in Section 25-3-41.

(7) The council shall:

(a) Annually review and recommend policies and programs to the Governor and the Legislature that will implement and meet federal requirements under the TANF program.

(b) Annually review and recommend policies and programs to the Governor and to the Legislature that will enable citizens of Mississippi to acquire the skills necessary to maximize their economic self-sufficiency.

(c) Review the provision of services and the use of funds and resources under the TANF program, and under all state-financed job training and job retraining programs, and advise the Governor and the Legislature on methods of coordinating such provision of services and use of funds and resources consistent with the laws and regulations governing such programs.

(d) Assist in developing outcome and output measures to measure the success of the Department of Human Services' efforts in implementing the TANF program. These recommendations shall be made to the Department of Human Services at such times as required in the event that the department implements new programs to comply with the TANF program requirements.

(e) Collaborate with the Mississippi Development Authority, local planning and development districts and local industrial development boards, and shall develop an economic development plan for the creation of manufacturing jobs in each of the counties in the state that has an unemployment rate of ten percent (10%) or more, which shall include, but not be limited to, procedures for business development, entrepreneurship and financial and technical assistance.

(8) A majority of the members of the council shall constitute a quorum for the conduct of meetings and all actions of the council shall be by a majority of the members present at a meeting.

(9) The council shall adopt rules and regulations as it deems necessary to carry out its responsibilities under this section and under applicable federal human resources programs.

(10) The council may make and enter into contracts and interagency agreements as may be necessary and proper.

(11) The council is authorized to commit and expend monies appropriated to it by the Legislature for its authorized purposes. The council is authorized to solicit, accept and expend public and private gifts, grants, awards and contributions related to furtherance of its statutory duties.

(12) Funds for the operations of the council shall be derived from federal funds for the operation of state councils pursuant to applicable federal human resources programs and from such other monies appropriated to it by the Legislature.

SOURCES: Laws, 1993, ch. 614, § 13; Laws, 1997, ch. 316, § 20; Laws, 2004, ch. 572, § 48; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 48; reenacted without change, Laws, 2010, ch. 559, § 48; reenacted without change, Laws, 2011, ch. 471, § 49; reenacted without change, Laws, 2012, ch. 515, § 49; Laws, 2014, ch. 397, § 58, eff from and after July 1, 2014.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

Amendment Notes — The 2014 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in (2)(e).

Cross References — Temporary Assistance to Needy Families (TANF) program, see §§ 43-17-1 et seq.

MANDATORY STATE SUPPLEMENTAL PAYMENTS TO AGED, BLIND AND DISABLED PERSONS

Sec.
43-1-31. Purpose of law; contracts with, and payment by, federal authority.
43-1-33. Definitions.
43-1-35. Amount of payments.
43-1-37. When person becomes ineligible to receive payments.

§ 43-1-31. Purpose of law; contracts with, and payment by, federal authority.

The purpose of Sections 43-1-31 through 43-1-37 is to provide that this state shall be eligible for medicaid payments pursuant to Title XIX of the federal Social Security Act with respect to expenditures for any quarter beginning after December 1973. The state department of public welfare shall negotiate an agreement with the secretary of health, education and welfare which shall provide that this state will provide to aged, blind and disabled individuals residing in this state, who for the month of December 1973 were eligible to receive and were recipients of aid or assistance under this state's plan approved under Titles I, X and XIV, mandatory state supplementary payments for each month beginning with January 1974, pursuant to Title XVI of the federal Social Security Act, in an amount determined in accordance with section 3(1) in order to maintain income levels equal to that of December 1973.

From and after July 1, 1974, mandatory state supplementary payments herein provided for shall be made by the appropriate federal authority, and the state department of public welfare is hereby directed to enter into contract with such federal authority to provide therefor.

SOURCES: Laws, 1974, ch. 301, § 1, eff from and after passage (approved January 29, 1974).

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Assistance to the blind generally, see §§ 43-3-51 et seq.

Old age assistance generally, see §§ 43-9-1 et seq.

Persons with disabilities, see §§ 43-29-1 et seq.

Federal Aspects — Title I of the Social Security Act appears as 42 USCS §§ 301 et seq.

Title X of the Social Security Act appears as 42 USCS §§ 1201 et seq.

Title XIV of the Social Security Act appears as 42 USCS §§ 1351 et seq.

Title XIX of the Social Security Act appears as 42 USCS §§ 1396 et seq.

RESEARCH REFERENCES

ALR. Reimbursement of public for financial assistance to aged persons. 29 A.L.R.2d 731.

Requisite residence for purpose of old age assistance. 43 A.L.R.2d 1427.

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 33 et seq.

Lawyers' Edition. Constitutionality of state welfare programs, including those which are federally assisted. 25 L. Ed. 2d 907.

§ 43-1-33. Definitions.

As used in Sections 43-1-31 through 43-1-37:

(a) "Aged, blind or disabled individual" shall mean any individual who would be so defined in section 1614(a) of the federal Social Security Act.

(b) "December 1973 income" shall mean an amount equal to the aggregate of:

(i) the amount of the aid or assistance in the form of money payments which such individual would have received, including any part of such amount which is attributable to meeting "special needs" or "special circumstances" as defined in Public Law 93-66, under a plan approved under Title I, X or XIV of the Social Security Act, if the terms and conditions of such plan relating to eligibility for and amount of such aid or assistance payable thereunder were for the month of December 1973 the same as those in effect under such plan for the month of June 1973, and

(ii) the amount of the income of such individual other than the aid or assistance described in subparagraph (i) received by such individual in December 1973, minus any such income which did not result, but which if properly reported would have resulted in a reduction in the amount of such aid or assistance.

SOURCES: Laws, 1974, ch. 301, § 2, eff from and after passage (approved January 29, 1974).

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Federal Aspects — Titles I, X, and XIV appear as 42 USCS §§ 301 et seq., 42 USCS §§ 1201 et seq. and 42 USCS §§ 1351 et seq., respectively.

Section 16149a) of the Social Security Act appears as 42 USCS 1382c.

§ 43-1-35. Amount of payments.

(1) The amount of the mandatory state supplementary payment in the case of any eligible individual or couple for any month shall be equal to the amount by which such individual's or couple's December 1973 income (as defined in Section 43-1-33) exceeds the amount to which such individual or couple is entitled under Title XVI for such month and the amount of any income of such individual for such month.

(2) If for any month after December 1973 there is a change with respect to any special need or special circumstance as defined in Section 43-1-33(b)(i) which, if such change had existed in December 1973, would have caused a reduction in the amount of such individual's aid or assistance payment; then, for such month and for each month thereafter, the amount of the mandatory minimum state supplementary payment payable to such individual may be reduced by an amount by which the payment would have been reduced by reason of such change.

SOURCES: Laws, 1974, ch. 301, § 3, eff from and after passage (approved January 29, 1974).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (2) by substituting "Section 43-1-33(b)(i)" for "Section 43-1-33(i)." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Federal Aspects — Title XVI of the Social Security Act appears as 42 USCS §§ 1381 et seq.

§ 43-1-37. When person becomes ineligible to receive payments.

An individual eligible for mandatory state supplementary payments from the state beginning in January 1974 shall not be eligible for such payments:

(a) the next succeeding month after the individual dies, or

(b) the next succeeding month after such individual ceases to be an aged, blind or disabled individual, or

(c) during any entire month in which such individual is not a resident of this state, or

(d) the next succeeding month after such individual's benefits under Title XVI, together with other income, equal or exceed such individual's December 1973 income as herein defined.

SOURCES: Laws, 1974, ch. 301, § 4, eff from and after passage (approved January 29, 1974).

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Federal Aspects — Title XVI of the Social Security Act appears on 42 USCS §§ 1381 et seq.

RESEARCH REFERENCES

ALR. Requisite residence for purpose of old age assistance. 43 A.L.R.2d 1427.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 188, 195.

DIVISION OF FAMILY AND CHILDREN'S SERVICES

SEC.
43-1-51. Creation of division; areas of responsibility.
43-1-53. Organization of division; qualifications of director.
43-1-55. Standards for employment and service delivery; Training and Testing Advisory Council created; duties; membership; meetings; chairperson; quorum [Repealed effective July 1, 2019].
43-1-57. Recordkeeping procedures; uniform intake procedure.
43-1-59. Allocation of departmental resources.
43-1-61. Repealed.
43-1-63. Interdepartmental sharing of resources and services for preventing and detecting child abuse and neglect.
43-1-65. Mississippi Child Care Quality Step System established by requiring Department of Human Services Office for Children and Youth to develop and implement pilot voluntary quality rating system (QRS).
43-1-67. Office of Children and Youth to conduct needs assessment to determine need for program to provide incentives to certain teachers/directors who make educational advancements listed in QRS criteria.

§ 43-1-51. Creation of division; areas of responsibility.

There is hereby created within the Department of Human Services a single and separate Division of Family and Children's Services. The division shall be responsible for the development, execution and provision of services in the following areas: (a) protective services for children; (b) foster care; (c) adoption services; (d) special services; (e) interstate compact; (f) licensure; and (g) such services as may be designated by the board. Employees working within the division shall be limited to work within the areas of service enumerated herein. Services enumerated under Section 43-15-13 et seq. for the foster care program shall be provided by qualified staff with appropriate case loads.

SOURCES: Laws, 1986, ch. 500, § 36; Laws, 1989, ch. 544, § 65; Laws, 1998, ch. 516, § 1; Laws, 2008, ch. 541, § 3, eff from and after July 1, 2008.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Laws of 2009, ch. 555, § 1 provides:

"SECTION 1. (1) There is created a joint legislative study committee to establish measurable goals and benchmarks for the State of Mississippi relating to children and family issues. The committee shall make recommendations on all aspects of family services with an emphasis on government assistance, child care, promoting educational enhancement, unemployment, youth involvement and crime deterrence, crisis intervention and reducing disparities in education, income and availability of health care. The committee shall, at a minimum, study and report to the 2010 Regular Session of the Legislature on whether the state should implement the following proposals:

"(a) Develop initiatives to combat juvenile disciplinary problems;

"(b) Gather information about current funding and services for children's services, by creating a children's budget and a report card to provide a comprehensive glance of total funding by age and level and type of services provided;

"(c) Coordinate funds and programs to minimize duplication and maximize the return on investments in children and youth programs;

"(d) Develop 'a positive youth development approach' that sets clear direction and provides a vision for policymakers;

"(e) Create small group homes and community-based programs aimed at shutting down and phasing out large juvenile institutions;

"(f) Create one (1) group home in each congressional district; and

"(g) Create a statewide youth advisory council, to get youth involved in the government process and community involvement.

"The joint committee shall make a report of its findings and recommendations to the Legislature during the first week of the 2010 Regular Session, including any recommended legislation.

"(2) The joint committee shall be composed of the following eleven (11) members:

"(a) The Chairman of the House Public Health and Human Services Committee, or his designee, and the Chairman of the Senate Public Health and Welfare Committee, or his designee;

"(b) Two (2) senators to be appointed by the Lieutenant Governor;

"(c) Two (2) representatives to be appointed by the Speaker of the House; and

"(d) Five (5) members to be appointed by the Governor of the State of Mississippi, who shall consist of state health agency heads, executive directors and other health-related officials.

"(3) Appointments shall be made within thirty (30) days after the effective date of this act. The joint committee shall hold its first meeting before August 1, 2009. The Chairman of the House Public Health and Human Services Committee, or his designee, and the Chairman of the Senate Public Health and Welfare Committee, or his designee, shall serve as cochairmen of the committee.

"(4) A majority of the members of the committee shall constitute a quorum. In the adoption of the rules, resolutions and reports, an affirmative vote of a majority of the members shall be required. All members shall be notified in writing of all meetings, such notices shall be mailed at least five (5) days prior to the date on which a meeting is to be held.

"(5) Members of the committee shall receive the customary per diem compensation, expense reimbursement and mileage for attending committee meetings when the Legislature is not in session.

"(6) The committee is authorized to accept funds from any source, public or private, to be expended in the implementing of its duties under this section.

"(7) To effectuate the purposes of this section, any department, division, board, bureau, committee or agency of the state or any political subdivision thereof, shall, at the request of the cochairmen of the committee, provide such facilities, assistance and data as will enable the committee to properly carry out its duties."

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

JUDICIAL DECISIONS

1. Sovereign immunity.

In a 42 U.S.S.C. § 1983 case in which a mother sued the Mississippi Department of Human Services' Division of Family and Children Services (FCS) for removing her child from her custody pursuant to a court order, the Eleventh Amendment shielded FCS and its workers, in their official capacities, from suit because FCS was an arm of the state, having been created within the Mississippi Department of Human Services (MDHS) and being mandated to be formed at each level of the MDHS by Miss. Code Ann. §§ 43-1-51, 43-1-53. Stewart v. Jackson County, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 95207 (S.D. Miss. Oct. 24, 2008), affirmed by 369 Fed. Appx. 593, 2010 U.S. App. LEXIS 5393 (5th Cir. Miss. 2010).

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 62-79.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 206-226.

§ 43-1-53. Organization of division; qualifications of director.

(1) The Division of Family and Children's Services shall be formed at each level of the Department of Human Services, including state, regional and county levels. The Executive Director of the Department of Human Services shall appoint and employ a director for the division who shall have a Master's Degree in a field related to children's services. In addition, he shall have no less than three (3) years' experience in the field of service to children. In lieu of such degree and experience, he shall have a minimum of ten (10) years' actual experience in the field of children's services.

(2) The state office of the Division of Family and Children's Services shall develop policy, provide training and oversee the implementation of services. The director shall establish such planning and policy councils as may be necessary to carry out these functions.

(3) The regional office of the Division of Family and Children's Services shall consist of a regional services director and a crisis intervention team to be dispatched on a case-by-case basis by the regional services director. From and after July 1, 1998, the Department of Human Services shall at a minimum employ and assign to the Division of Family and Children's Services two (2) additional regional services directors for supervision of the foster care program.

(4) Area offices. Each region shall be divided into three (3) areas, each of which shall have two (2) supervisors and direct service workers deployed at the county level, but not limited in jurisdiction to that county.

(5) Counties. The area supervisors shall assign service workers so that every county has an appropriate access point for all services.

SOURCES: Laws, 1986, ch. 500, § 37; Laws, 1989, ch. 544, § 66; Laws, 1998, ch. 516, § 2, eff from and after passage (approved March 31, 1998).

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

JUDICIAL DECISIONS

1. Sovereign immunity.

In a 42 U.S.S.C. § 1983 case in which a mother sued the Mississippi Department of Human Services' Division of Family and Children Services (FCS) for removing her child from her custody pursuant to a court order, the Eleventh Amendment shielded FCS and its workers, in their official capacities, from suit because FCS was an arm of the state, having been created within the Mississippi Department of Human Services (MDHS) and being mandated to be formed at each level of the MDHS by Miss. Code Ann. §§ 43-1-51, 43-1-53. Stewart v. Jackson County, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 95207 (S.D. Miss. Oct. 24, 2008), affirmed by 369 Fed. Appx. 593, 2010 U.S. App. LEXIS 5393 (5th Cir. Miss. 2010).

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 62-79.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 206-226.

§ 43-1-55. Standards for employment and service delivery; Training and Testing Advisory Council created; duties; membership; meetings; chairperson; quorum [Repealed effective July 1, 2019].

(1) The Office of Family and Children's Services and the Division of Aging and Adult Services shall devise formal standards for employment as a family protection worker and as a family protection specialist within their respective offices and for service delivery designed to measure the quality of services delivered to clients, as well as the timeliness of services. Each family protection worker and family protection specialist shall be assessed annually by a supervisor who is a licensed social worker who is knowledgeable in the standards promulgated. The standards devised by each office shall be applicable to all family protection workers and family protection specialists working under that office.

(2) The Office of Family and Children's Services shall devise formal standards for family protection workers of the Department of Human Services who are not licensed social workers. Those standards shall require that:

(a) In order to be employed as a family protection worker, a person must have a bachelor's degree in either psychology, sociology, nursing, family studies, or a related field, or a graduate degree in either psychology, sociology, nursing, criminal justice, counseling, marriage and family therapy or a related field. The determination of what is a related field shall be made by certification of the State Personnel Board; and

(b) Before a person may provide services as a family protection worker, the person shall complete four (4) weeks of intensive training provided by the training unit of the Office of Family and Children's Services, and shall take and receive a passing score on the certification test administered by the training unit upon completion of the four-week training. Upon receiving a passing score on the certification test, the person shall be certified as a family protection worker by the Department of Human Services. Any person who does not receive a passing score on the certification test shall not be employed or maintain employment as a family protection worker for the department. Further, a person, qualified as a family protection worker through the procedures set forth above, shall not conduct forensic interviews of children until the worker receives additional specialized training in child forensic interview protocols and techniques by a course or curriculum approved by the Department of Human Services to be not less than forty (40) hours.

(3) For the purpose of providing services in child abuse or neglect cases, youth court proceedings, vulnerable adults cases, and such other cases as designated by the Executive Director of Human Services, the caseworker or service provider shall be a family protection specialist or a family protection worker whose work is overseen by a family protection specialist who is a licensed social worker.

(4) The Department of Human Services and the Office of Family and Children's Services shall seek to employ and use family protection specialists to provide the services of the office, and may employ and use family protection workers to provide those services only in counties in which there is not a sufficient number of family protection specialists to adequately provide those services in the county.

(5)(a) There is created a Training and Testing Advisory Council to review the department's program of training and testing of family protection workers and to make recommendations pertaining to the program to the department. The advisory council shall be composed of the following ten (10) members: two (2) employees of the department appointed by the Executive Director of Human Services, including one (1) representative of the Office of Family and Children's Services and one (1) representative of the Division of Aging and Adult Services; the Chairman of the Consortium of Accredited Schools of Social Work in Mississippi; and the executive director or a board member of a professional association or licensing board for each field of study named in subsection (2)(a) of this section, as follows: the Mississippi Chapter of the National Association of Social Workers; a marriage and family therapist who is a member of the Board of Examiners for Social Workers and Marriage and Family Therapists, to be selected by the four (4) members of the board of examiners who are marriage and family therapists; the Mississippi Nurses' Association; the Mississippi Prosecutors Association; the Mississippi Counseling Association; the Mississippi Psychological Association; and an officer of the Alabama-Mississippi Sociological Association who is a Mississippi resident elected by the executive committee of the association. The executive director of each association (excluding the Alabama-Mississippi Sociological Association) and chairman of the consortium may designate an alternate member to serve in his stead on the advisory council. Members of the advisory council shall serve without salary or per diem.

(b) A majority of the advisory council members shall select from their membership a chairperson to preside over meetings and a vice chairperson to preside in the absence of the chairperson or when the chairperson is excused. The advisory council shall adopt procedures governing the manner of conducting its business. A majority of the members shall constitute a quorum to do business.

(6) This section and Section 43-27-107, Mississippi Code of 1972, shall stand repealed on July 1, 2019.

SOURCES: Laws, 1986, ch. 500, § 38; Laws, 2004, ch. 489, § 1; Laws, 2006, ch. 589, § 2; Laws, 2006, ch. 600, § 1; Laws, 2009, ch. 364, § 1; Laws, 2010, ch. 461, § 1; Laws, 2012, ch. 470, § 6; Laws, 2015, ch. 403, § 5, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 2 of ch. 589, Laws of 2006, effective from and after July 1, 2006 (approved April 21, 2006), amended this section. Section 1 of ch. 600, Laws of 2006, effective from and after July 1, 2006 (approved April 24, 2006), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 589, Laws of 2006, which contains language that specifically provides that it supersedes § 43-1-55 as amended by Laws of 2006, ch. 600.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (a) of subsection (5). The word "counsel" was changed to "council" following "advisory" in the next-to-last sentence. The Joint Committee ratified the correction at its May 31, 2006, meeting.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

In (3), there is a reference to "vulnerable adult cases." The "Vulnerable Adults Act" was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357 to change references to "vulnerable adult" to "vulnerable person."

Amendment Notes — The 2015 amendment extended the repealer provision in (6) from "July 1, 2015" to "July 1, 2019."

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Mississippi Law Enforcement Officers' Training Academy, see §§ 45-5-1 et seq.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 62-79.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 206-226.

§ 43-1-57. Recordkeeping procedures; uniform intake procedure.

(1) The Division of Family and Children's Services shall establish a record-keeping procedure to insure that all referrals of neglect and/or abuse are accurately and adequately maintained for future or cross-reference.

(2) In addition to the toll-free abuse reporting telephone system, the division shall establish a uniform intake procedure for the receipt and referral to the appropriate personnel for investigation. The uniform intake procedure shall be made available to all appropriate agencies and the public in order to facilitate the necessary protective services.

SOURCES: Laws, 1986, ch. 500, § 39, eff from and after July 1, 1986.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 62-79.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 206-226.

§ 43-1-59. Allocation of departmental resources.

It is the intent of the Legislature that the resources devoted to family and children's services and to public assistance programs be clearly delineated and that all resources intended for child protection and other related purposes be expended in service of that goal.

SOURCES: Laws, 1986, ch. 500, § 40; Laws, 1989, ch. 544, § 67, eff from and after July 1, 1989.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Cross References — State Department of Public Welfare and State Board of Public Welfare as meaning Department of Human Services, see § 43-1-1.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 62-79.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 206-226.

§ 43-1-61. Repealed.

Repealed by Laws, 1986, ch. 500, § 41(4), eff from and after January 1, 1987.

[Laws, 1986, ch. 500, § 41]

Editor's Note — Former § 43-1-61 provided for a Transition Council.

§ 43-1-63. Interdepartmental sharing of resources and services for preventing and detecting child abuse and neglect.

The Department of Human Services shall have the authority to use the services and resources of the State Department of Education and the State Department of Health and of all other appropriate state departments, agencies, institutions or political subdivisions as will aid in carrying out the purposes of this chapter. It shall be the duty of all such state departments, agencies and institutions to make available such services and resources to the department, including, but not necessarily limited to, such services and resources as may be required to perform appropriate criminal history record checks on prospective foster and relative child placements for the purpose of preventing and detecting abuse and neglect.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

SOURCES: Laws, 2002, ch. 509, § 1, eff from and after July 1, 2002.

§ 43-1-65. Mississippi Child Care Quality Step System established by requiring Department of Human Services Office for Children and Youth to develop and implement pilot voluntary quality rating system (QRS).

The Department of Human Services shall establish the Mississippi Child Care Quality Step System by requiring the Office for Children and Youth of the Department of Human Services, the lead agency for the Child Care and Development Fund (CCDF), to develop and implement a pilot voluntary Quality Rating System (QRS). The purpose of the pilot system will be to improve the quality of all licensed early care and education and after-school programs. The system is to be phased in over the next five (5) years beginning July 1, 2006, subject to appropriation. The QRS criteria will be the basis, at minimum, for the QRS, and shall address the following components: administrative policy, professional development, learning environment, and parental involvement and evaluation.

In addition, the Office for Children and Youth shall develop and administer funds, based on appropriation, to create a Child Care Resource and Referral (CCR& R) statewide system in collaboration with community and junior colleges, universities, Mississippi Public Broadcasting, state agencies and/or nonprofit community entities. The CCR& R agencies shall provide training specific to the QRS criteria to enable early care and education program quality to improve as measured by the QRS system; and offer parent education information and training on what a quality early care and education program comprises and how to identify one. This program shall begin July 1, 2006, subject to appropriation.

SOURCES: Laws, 2006, ch. 504, § 16; reenacted without change, Laws, 2009, ch. 345, § 35, eff from and after June 30, 2009.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

§ 43-1-67. Office of Children and Youth to conduct needs assessment to determine need for program to provide incentives to certain teachers/directors who make educational advancements listed in QRS criteria.

The Office for Children and Youth of the Department of Human Services shall conduct a needs assessment to determine the need for an incentive program, which would allow participating early care and education programs in the Quality Rating System (QRS) access to funds to provide incentives to teachers/directors that make educational advancements that are listed in the QRS criteria. If determined to be feasible and depending on the availability of funds, guidelines for such an incentive program shall be developed by the Office for Children and Youth.

SOURCES: Laws, 2006, ch. 504, § 17; reenacted without change, Laws, 2009, ch. 345, § 36, eff from and after June 30, 2009.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

MISSISSIPPI INTERAGENCY COUNCIL ON HOMELESSNESS

SEC.
43-1-101. Mississippi Interagency Council on Homelessness created; duties and purposes; membership.

§ 43-1-101. Mississippi Interagency Council on Homelessness created; duties and purposes; membership.

(1) There is created the Mississippi Interagency Council on Homelessness. The purpose of the council is to establish, develop and implement a plan to reduce homelessness that includes a strong focus on the needs of homeless children, youth and families, as well as individuals and veterans who are homeless.

(2) In addition to the duties prescribed in subsection (1) the council shall annually make a report to the Governor, the House of Representatives, the Senate and the public regarding the council's progress in meeting its goals and objectives.

(3) The council shall be composed of the following members:

(a) A representative from the Office of the Governor, appointed by the Governor;

(b) The Chairperson or his designee of the Youth and Family Affairs Committee of the House of Representatives and the Chairperson or his designee of the Housing Committee of the Senate;

(c) The Executive Director of the Department of Health and Human Services or his designee;

(d) The Executive Director of the Department of Mental Health or his designee;

(e) The Executive Director of the Mississippi Development Authority or his designee;

(f) The State Superintendent of the Department of Education or his designee;

(g) A representative of Partners to End Homelessness, appointed by the Governor;

(h) A representative of Mississippi United to End Homelessness, appointed by the Governor;

(i) A representative of Open Doors Counseling Center, appointed by the Governor;

(j) A representative of a school district that is working on the McKinney-Vento Homeless Education Assistance Act, appointed by the State Superintendent of Education;

(k) A representative of the Mississippi Campaign to End Child Homelessness, appointed by the Governor;

(*l*) Two (2) directors from homeless and domestic violence emergency shelters, appointed by the Governor;

(m) A youth who is or has been homeless, appointed by the State Superintendent of Education;

(n) A representative of the Oakley Youth Development Center, appointed by the Governor;

(o) The Executive Director of the State Veterans Affairs Board or his designee;

(p) The Executive Director of Hope Enterprises, or his designee; and

(q) A representative from a community action agency appointed by the Governor.

(4) Appointments shall be made within thirty (30) days after July 1, 2013. Within fifteen (15) days thereafter on a day to be designated jointly by the Speaker of the House and the Lieutenant Governor, the council shall meet and organize by selecting from its membership a chairperson and a vice chairperson. The vice chairperson shall also serve as secretary and shall be responsible for keeping all records of the council. A majority of the members of the council shall constitute a quorum. In the selection of its officers and the adoption of rules, resolutions and reports, an affirmative vote of a majority of the council shall be required. All members shall be notified in writing of all meetings, and those notices shall be mailed at least fifteen (15) days before the date on which a meeting is to be held.

(5) Members of the council shall serve without compensation for their services, and the council shall perform its duties without legislative appropriation or the use of any state funds for that purpose; however, the council, by approval of a majority of the appointed members of the council, is authorized to accept funds that may be donated or provided in the form of financial grants from public or private sources. In addition, any department, division, board, bureau, commission or agency of the state, or of any political subdivision thereof, shall provide, at the request of the chair of the council, such facilities, assistance and data as will enable the council to carry out its duties.

SOURCES: Laws, 2013, ch. 448, § 1, eff from and after July 1, 2013.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 9 of this title are known collectively as the "Mississippi Old Age Security Law."

Pursuant to § 43-9-41, this chapter and Chapter 9 of this title are supplementary to any and all welfare laws now in force in Mississippi that are not directly in conflict with the chapters.

CHAPTER 3

Blind Persons

Adjustment Center for the Blind 43-3-1
Assistance to the Blind 43-3-51
Mississippi Industries for the Blind 43-3-101

ADJUSTMENT CENTER FOR THE BLIND

Sec.	
43-3-1.	Short title.
43-3-3.	Declaration of public policy.
43-3-5.	Establishment, maintenance, and control of facility.
43-3-7.	Rules and regulations.
43-3-9.	Medical school and hospital personnel to cooperate in carrying out intent of law.
43-3-11.	Acquisition of public funds for constructing and equipping center; acceptance of gifts and grants.
43-3-13.	Department of Finance and Administration authorized to build facility; funds appropriated or granted to be deposited in State Treasury.
43-3-15.	Construction of law.

§ 43-3-1. Short title.

Sections 43-3-1 through 43-3-15 shall be cited as "The Adjustment Center for the Blind Law of 1968."

SOURCES: Codes, 1942, § 6708-61; Laws, 1968, ch. 436, § 1, eff from and after July 1, 1968.

Cross References — Statewide system of aid for the blind, see §§ 43-3-51 et seq.
Mississippi Industries for the Blind, see §§ 43-3-101 et seq.

§ 43-3-3. Declaration of public policy.

It is declared that the state public welfare demands and the state public policy requires that a state facility be built and a state program be established that can teach and assist individuals who are blind to adjust to and become a useful part of society; that in addition to existing facilities and vocational and rehabilitation programs for individuals who are blind in Mississippi, an Adjustment Center for Individuals who are Blind is needed to assist those persons in adopting attitudes, behavior patterns, and otherwise becoming acclimated for a full, more useful and productive life.

SOURCES: Codes, 1942, § 6708-62; Laws, 1968, ch. 436, § 2, eff from and after July 1, 1968; Laws, 2002, ch. 463, § 23, eff from and after July 1, 2002.

Cross References — Department of Human Services to administer Vocational Rehabilitation for the Blind Law, see § 37-33-54.

§ 43-3-5. Establishment, maintenance, and control of facility.

The directors of the University of Mississippi Medical School and Teaching Hospital, with the direction of the Office of Vocational Rehabilitation for the Blind of the State Department of Rehabilitation Services, may establish, maintain and supervise an Adjustment Center for Individuals who are Blind at the University of Mississippi Medical Center in Jackson, Mississippi, and shall jointly govern the facility.

The governing authorities shall appoint a director and shall employ such other technical, professional and clerical assistance as may be required from time to time and fix their duties and compensation. All employees and other personnel must be qualified by education and experience.

SOURCES: Codes, 1942, § 6708-63; Laws, 1968, ch. 236, § 3, eff from and after July 1, 1968; Laws, 2002, ch. 463, § 24, eff from and after July 1, 2002.

Cross References — Department of Human Services to administer Vocational Rehabilitation for the Blind Law, see § 37-33-54.

§ 43-3-7. Rules and regulations.

The governing authorities shall promulgate such reasonable rules and regulations as are necessary to carry out the intent of Sections 43-3-1 through 43-3-15. Any such rules and regulations shall be published and kept on file in the office of the director and shall be available to the general public on demand.

SOURCES: Codes, 1942, § 6708-64; Laws, 1968, ch. 236, § 4, eff from and after July 1, 1968.

Cross References — Department of Human Services to administer Vocational Rehabilitation for the Blind Law, see § 37-33-54.

§ 43-3-9. Medical school and hospital personnel to cooperate in carrying out intent of law.

The directors, professors, physicians, and all other personnel employed at the University of Mississippi Medical School and Teaching Hospital shall offer full cooperation to the Office of Vocational Rehabilitation for the Blind of the State Department of Rehabilitation Services in carrying out the intent of Sections 43-3-1 through 43-3-15.

SOURCES: Codes, 1942, § 6708-65; Laws, 1968, ch. 236, § 5, eff from and after July 1, 1968; Laws, 2002, ch. 463, § 25, eff from and after July 1, 2002.

Cross References — Department of Human Services to administer Vocational Rehabilitation for the Blind Law, see § 37-33-54.

§ 43-3-11. Acquisition of public funds for constructing and equipping center; acceptance of gifts and grants.

The agencies named or referred to are authorized separately or collectively to cooperate with any agency or instrumentality of the state or of the United States government in acquiring public funds for use in the constructing and equipping of the Adjustment Center for Individuals who are Blind and for use in the subsequent administration and operation incidental to carrying out the provisions of Sections 43-3-1 through 43-3-15. Grants or donations to the center may be accepted from individuals, firms, corporations, foundations and other interested organizations and societies.

SOURCES: Codes, 1942, § 6708-66; Laws, 1968, ch. 236, § 6, eff from and after July 1, 1968; Laws, 2002, ch. 463, § 26, eff from and after July 1, 2002.

Cross References — Department of Human Services to administer Vocational Rehabilitation for the Blind Law, see § 37-33-54.

§ 43-3-13. Department of Finance and Administration authorized to build facility; funds appropriated or granted to be deposited in State Treasury.

The Department of Finance and Administration is authorized to build a suitable facility, and payment for construction of that building shall be made from any money made available for this purpose.

Any funds appropriated or granted from any source for purposes of Sections 43-3-1 through 43-3-15 shall be deposited into a fund in the State Treasury to be designated The Adjustment Center for Individuals who are Blind Fund.

SOURCES: Codes, 1942, § 6708-67; Laws, 1968, ch. 236, § 7, eff from and after July 1, 1968; Laws, 2002, ch. 463, § 27, eff from and after July 1, 2002.

Cross References — Department of Human Services to administer Vocational Rehabilitation for the Blind Law, see § 37-33-54.

§ 43-3-15. Construction of law.

This law shall be construed to be supplemental and in addition to any present laws governing the agencies specified in Sections 43-3-1 through 43-3-15. Whenever a conflict exists between such sections and any of said present laws, the provisions of Sections 43-3-1 through 43-3-15 will control.

SOURCES: Codes, 1942, § 6708-68; Laws, 1968, ch. 236, § 8, eff from and after July 1, 1968.

Cross References — Department of Human Services to administer Vocational Rehabilitation for the Blind Law, see § 37-33-54.

ASSISTANCE TO THE BLIND

Sec.
43-3-51. Statewide system of aid.
43-3-53. Definitions.
43-3-55. Eligibility for assistance to the needy blind.
43-3-57. Amount of assistance.
43-3-59. Duties of State Department of Public Welfare.
43-3-61. Duties of county departments.
43-3-63. Application for assistance.
43-3-65. Investigation of applications.
43-3-67. Examination by ophthalmologist or optometrist.
43-3-69. Granting of assistance.
43-3-71. Assistance not assignable.
43-3-73. Appeal to the State Department of Public Welfare.
43-3-75. Periodic reconsideration and changes in amount of assistance.
43-3-77. Reexamination as to eyesight.
43-3-79. Recovery from a recipient.
43-3-81. Fraudulent acts.
43-3-83. Receipt and disposition of federal and other funds and manner of disbursing same.
43-3-85 and 43-3-87. Repealed.
43-3-89. Detailed report to the Legislature.
43-3-91. Donations may be received and expended.
43-3-93. Operation by blind persons of vending stands in public buildings.

§ 43-3-51. Statewide system of aid.

For the purpose of providing for blind persons in need, a statewide system of aid to the needy blind is hereby established and shall be in effect in all political subdivisions of this state to operate with due regard to the varying conditions and costs of living, to be financed by state appropriations therefor, and to be administered by the State Department of Public Welfare.

SOURCES: Codes, 1942, § 7248; Laws, 1938, ch. 181.

Cross References — Mandatory state supplemental payments to aged and blind persons and persons with disabilities, see §§ 43-1-31 to 43-1-37.

Adjustment center for the blind, see §§ 43-3-1 et seq.

Mississippi Industries for the Blind, see §§ 43-3-101 et seq.

State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 193-198.

§ 43-3-53. Definitions.

When used herein, the term "State Department" means the State Department of Public Welfare.

"County department" means the county board of public welfare and the county welfare agent of each of the several counties in this state.

"Applicant" means a person who has applied for assistance under Sections 43-3-51 through 43-3-91.

"Recipient" means a person who has received assistance under the terms of Sections 43-3-51 through 43-3-91.

"Ophthalmologist" means a physician licensed to practice medicine in this state and who is actively engaged in the treatment of diseases of the human eye.

"Assistance" means money payments, including vendor payments, made to or in behalf of needy blind persons hereunder.

SOURCES: Codes, 1942, § 7249; Laws, 1938, ch. 181; Laws, 1962, ch. 563, § 1, eff from and after passage (approved April 25, 1962).

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-3-55. Eligibility for assistance to the needy blind.

Assistance shall be granted under Sections 43-3-51 through 43-3-91 to any person who:

(a) Has no vision or whose vision, with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential;

(b) Has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;

(c) Is not an inmate of any public institution at the time of receiving assistance except as a patient in a public medical institution, or is not a patient in any institution for tuberculosis or mental diseases, or is not a patient in any medical institution as a result of having been diagnosed as having tuberculosis or psychosis. In the event the federal Social Security Act, or other appropriate federal statutes are so amended as to permit funds appropriated by Congress to be used for assistance to blind persons who are inmates of public institutions, then being an inmate of any such institution shall not disqualify any such person for assistance. An inmate of such an institution may, however, make application for such assistance but the assistance, if granted, shall not begin until after he ceases to be an inmate;

(d) Is not receiving old age assistance;

(e) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under Sections 43-3-51 through 43-3-91 at any time within two (2) years immediately prior to the filing of application for assistance pursuant to the provisions of said sections.

SOURCES: Codes, 1942, § 7250; Laws, 1938, ch. 181; Laws, 1960, ch. 439, § 2.

§ 43-3-57. Amount of assistance.

The amount of assistance which any needy blind person shall receive shall be determined by the county department with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case and in accordance with the rules and regulations made by the state department, and shall be only sufficient, when added to all other income and support of the recipient, to provide such persons with a reasonable subsistence compatible with decency and health. In making such determination the state department shall disregard the earned income specified by the federal Social Security Act, as amended, and may disregard any other income of the recipient as specified in the federal Social Security Act, as amended.

SOURCES: Codes, 1942, § 7251; Laws, 1938, ch. 181; Laws, 1952, ch. 386; Laws, 1962, ch. 563, § 2; Laws, 1968, ch. 562, § 7, eff from and after passage (approved July 30, 1968).

Cross References — Disclosure of records of public assistance disbursements and payments, see § 43-1-19.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare § 196.

§ 43-3-59. Duties of State Department of Public Welfare.

The state department shall:

(a) Supervise the administration of assistance to the needy blind under Sections 43-3-51 through 43-3-91 by the county departments;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of Sections 43-3-51 through 43-3-91. All rules and regulations made by the state department shall be binding on the counties and shall be complied with by the respective county departments;

(c) Designate the procedure to be followed in securing a competent medical examination for the purpose of determining blindness in the individual applicant for assistance;

(d) Establish minimum standards for personnel employed by the state and county departments in the administration of Sections 43-3-51 through 43-3-91 and make necessary rules and regulations to maintain such standards;

(e) Prescribe the form of and print and supply to the county departments such forms as it may deem necessary and advisable;

(f) Cooperate with the federal government in matters of mutual concern pertaining to assistance to the needy blind, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(g) Make such reports, in such form and containing such information, as the federal government may from time to time require and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(h) Publish an annual report and such interim reports as may be necessary;

(i) Promulgate rules and regulations stating, in terms of ophthalmic measurements, the amount of visual acuity which an applicant may have and still be eligible for assistance under Sections 43-3-51 through 43-3-91.

SOURCES: Codes, 1942, § 7252; Laws, 1938, ch. 181.

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-3-61. Duties of county departments.

The county departments shall:

(a) Administer the provisions of Sections 43-3-51 through 43-3-91 in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of said sections;

(b) Report to the state department at such times and in such manner and form as the state department may from time to time direct.

SOURCES: Codes, 1942, § 7253; Laws, 1938, ch. 181.

§ 43-3-63. Application for assistance.

Application for assistance under Sections 43-3-51 through 43-3-91 shall be made to the county department of the county in which the applicant resides. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state department. Such application shall contain a statement of the amount of property, both personal and real, in which the applicant has an interest and of all income which he may have at the time of the filing of the application, and such other information as may be required by the state department.

SOURCES: Codes, 1942, § 7254; Laws, 1938, ch. 181.

§ 43-3-65. Investigation of applications.

Whenever a county department receives an application for assistance under Sections 43-3-51 through 43-3-91, an investigation and record shall promptly be made of the circumstances of the applicant in order to ascertain the facts supporting the application and in order to obtain such other information as may be required by the rules of the state department.

SOURCES: Codes, 1942, § 7255; Laws, 1938, ch. 181.

§ 43-3-67. Examination by ophthalmologist or optometrist.

No application shall be approved until the applicant has been examined by an ophthalmologist or by a licensed optometrist designated or approved by the state department to make such examinations, and said applicant shall be permitted to choose whether the examination will be made by an ophthalmologist or by an optometrist. The examining ophthalmologist or optometrist shall certify in writing upon forms provided by the state department the findings of the examination.

This section shall apply to all state, county, or municipal agencies handling or administering public or private funds or private agencies handling public funds in connection with any of their visual care programs for children or adults. Sections 73-51-1 through 73-51-5, Mississippi Code of 1972, shall apply in actions to correct any violation of this section.

SOURCES: Codes, 1942, § 7256; Laws, 1938, ch. 181; Laws, 1952, ch. 385; Laws, 1966, ch. 608, § 1, eff from and after passage (approved February 25, 1966).

§ 43-3-69. Granting of assistance.

Upon the completion of such investigation the county department shall decide whether the applicant is eligible for assistance under the provisions of Sections 43-3-51 through 43-3-91, and determine in accordance with the rules and regulations of the state department the amount of such assistance and the date on which such assistance shall begin. The county department shall notify the applicant of its decision. Such assistance shall be paid monthly to the applicant upon the order of the county department from funds allocated to the county department for this purpose.

SOURCES: Codes, 1942, § 7257; Laws, 1938, ch. 181.

Cross References — Disclosure of records of disbursements and payments of public assistance, see § 43-1-19.

§ 43-3-71. Assistance not assignable.

Assistance granted under Sections 43-3-51 through 43-3-91 shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under said sections shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

SOURCES: Codes, 1942, § 7258; Laws, 1938, ch. 181.

§ 43-3-73. Appeal to the State Department of Public Welfare.

If an application is not acted upon by the county department within a reasonable time after the filing of the application, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provision of Sections 43-3-51 through 43-3-91, the applicant or recipient may appeal to the state department in the manner and form prescribed by the state department. The state department shall, upon receipt of such appeal, give the applicant or recipient reasonable notice and opportunity for a fair hearing.

The state department may also, upon its own motion, review any decision of a county department, and may consider any application upon which a decision has not been made by the county department within a reasonable time. The state department may make such additional investigation as it may deem necessary, and shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of Sections 43-3-51 through 43-3-91. Applicants or recipients affected by such decisions of the state department shall, upon request, be given reasonable notice and opportunity for a fair hearing by the state department.

All decisions of the state department shall be final and shall be binding upon the county involved and shall be complied with by the county department.

SOURCES: Codes, 1942, § 7259; Laws, 1938, ch. 181.

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Appeal in case of old age assistance, see § 43-9-21.

Appeal in case of aid to persons with disabilities, see § 43-29-17.

§ 43-3-75. Periodic reconsideration and changes in amount of assistance.

All assistance grants made under Sections 43-3-51 through 43-3-91 shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department may deem necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the recipient's circumstances have altered sufficiently to warrant such action.

SOURCES: Codes, 1942, § 7260; Laws, 1938, ch. 181.

§ 43-3-77. Reexamination as to eyesight.

A recipient shall submit to a reexamination as to his eyesight when required to do so by the county or the state department. He shall also furnish any information required by the county department or by the state department.

SOURCES: Codes, 1942, § 7261; Laws, 1938, ch. 181.

§ 43-3-79. Recovery from a recipient.

If at any time during the continuance of assistance the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application provided for in Section 43-3-63, it shall be the duty of the recipient immediately to notify the county department of the receipt or possession of such property or income and the county department may, after investigation, either cancel the assistance or alter the amount thereof in accordance with the circumstances. Any assistance paid after the recipient has come into possession of such property or income and in excess of his need shall be recoverable by the county as a debt due to the state and the federal government in proportion to the amount of the assistance paid by each respectively.

SOURCES: Codes, 1942, § 7262; Laws, 1938, ch. 181.

§ 43-3-81. Fraudulent acts.

Whoever knowingly obtains, or attempts to obtain, or aids, or abets any person to obtain by means of a wilfully false statement or representation or by impersonation, or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is justly entitled, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars ($500.00) or be imprisoned for not more than four (4) months, or be both so fined and imprisoned in the discretion of the court. In assessing the penalty, the court shall take into consideration, among other factors, the amount of money fraudulently received.

SOURCES: Codes, 1942, § 7263; Laws, 1938, ch. 181.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 43-3-83. Receipt and disposition of federal and other funds and manner of disbursing same.

Federal and other funds shall be received, disposed of, and disbursed in the same manner as is provided for the handling of funds for the needy aged in Sections 43-9-33 through 43-9-37. Any funds paid to any applicant under the provisions of Sections 43-3-51 through 43-3-91 shall be paid from the funds appropriated to the state department of public welfare, and the amount paid to each applicant coming under the provisions of Sections 43-3-51 through 43-3-91 shall be on the same basis as the amount paid to other applicants similarly situated.

SOURCES: Codes, 1942, § 7264; Laws, 1938, ch. 181.

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

§§ 43-3-85 and 43-3-87. Repealed.

Repealed by Laws, 1983, ch. 422, § 10, eff from and after July 1, 1983.
§ 43-3-85. [Codes, 1942, § 7265; Laws, 1938, ch. 181]
§ 43-3-87. [Codes, 1942, § 7266; Laws, 1938, ch. 181]

Editor's Note — Former § 43-3-85 directed the State Board of Public Welfare to maintain a bureau of information.

Former § 43-3-87 authorized the State Board of Public Welfare to appoint and fix the compensation of workers.

§ 43-3-89. Detailed report to the Legislature.

The State Board of Public Welfare shall make a detailed report to the Legislature each year in which it convenes, showing all appropriations and donations received and how same have been expended, and covering its activities and accomplishments and making recommendations therein for the further improvement of the conditions of the blind in the state.

SOURCES: Codes, 1942, § 7267; Laws, 1938, ch. 181.

§ 43-3-91. Donations may be received and expended.

The State Board of Public Welfare is hereby authorized and empowered to receive donations from any and all sources and expend same for the purpose herein outlined.

SOURCES: Codes, 1942, § 7268; Laws, 1938, ch. 181.

§ 43-3-93. Operation by blind persons of vending stands in public buildings.

(1) For the purpose of providing legally blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of this section, may operate vending facilities, snack bars or similar facilities in cooperation with the federal government in the furtherance of the provisions of the Vending Stand Act, of Congress known as the Randolph-Sheppard Vending Stand Act, dated June 20, 1936, as amended.

(2) Definitions as used in this section:

(a) "Blind person" shall mean any individual with insufficient vision to perform tasks for which sight is essential.

(b) "State agency" shall mean any department, commission, agency or instrumentality of the state.

(c) "State property or state building" means building and land controlled, leased or owned by the state, exclusive of a building and land controlled, leased or owned in whole or in part by schools, the Mississippi State Fair, or any of the colleges or universities.

(d) "Vending facility" includes a snack bar, concession stand, cafeteria, vending stand, vending machines or other facility at which food, drinks, novelties, newspapers, periodicals, confections, souvenirs, tobacco products, or other related items are regularly sold.

(e) "Vocational Rehabilitation for the Blind" shall mean the rehabilitation agency for the blind created and empowered under Sections 37-33-53 et seq.

(3) The Director of Vocational Rehabilitation for the Blind shall, with the approval of the Board of Trustees of the Mississippi School for the Blind and the Mississippi School for the Deaf, make regulations in conformity with the Randolph-Sheppard Vending Stand Act, as amended, and do all things necessary and proper to carry out the provisions of this section, including surveying opportunities for the operation of vending facilities by blind persons and collection of such set-aside funds, with such collections being placed in a special deposit fund to be used only for the following purposes authorized under the Randolph-Sheppard Vending Stand Act, as amended: (a) the maintenance and replacement of equipment; (b) management services; and (c) the purchase of new equipment.

(4) The person, board or legislative body having the care, custody and control of any state, county or municipal building are hereby authorized and empowered to permit the establishment and operation of vending facilities by blind persons duly licensed by Vocational Rehabilitation for the Blind in any state, county or municipal building under their respective jurisdictions.

(5) In order to promote the employment and the self-sufficiency of blind persons in Mississippi, state agencies shall, upon the request of the Vocational Rehabilitation for the Blind, give preference to blind persons in the operation of vending facilities on state property.

(6) On state property, where Vocational Rehabilitation for the Blind determines that a vending facility should not be established or should not continue to operate due to insufficient revenues, Vocational Rehabilitation for the Blind shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin or currency operated vending machines for such state property location. Profits secured by Vocational Rehabilitation for the Blind from such machines shall be used only for the support of vending facilities operated by Vocational Rehabilitation for the Blind.

(7) If Vocational Rehabilitation for the Blind determines that a location is suitable for the operation of a vending facility by a blind person, the state agency with authority over the location may provide proper space, plumbing, lighting and electrical outlets for the vending facility in the original planning and construction or in alteration or renovation of the present location. The state agency shall provide necessary utilities, janitorial services and garbage disposal for the operation of the vending facility. Space for the vending facility shall be provided without charge. It shall also be the duty of the state agencies to inform Vocational Rehabilitation for the Blind in writing of existing or prospective vending facilities and coin or currency operated vending machines located on property under the control of the state agency.

(8) Where, on July 1, 1985, vending facilities are operated on state property by those other than blind persons, the contract or agreement for the provision of such vending facilities shall not be renewed or extended unless the Director of Vocational Rehabilitation for the Blind is notified thereof, and he determines within thirty (30) days of the date of such notification that the vending facilities are not, or cannot become, suitable for operation by the blind. However, if the Director of Vocational Rehabilitation for the Blind fails to provide for the operation of the vending facilities by the blind within thirty (30) days of such notification, the existing contract may be renewed or extended.

(9)(a) This section is not intended to apply to food services provided by hospitals or residential institutions as a direct service to patients, inmates, trainees or institutionalized persons.

(b) This section shall not prohibit the continued use of coin-operated vending machines currently the property of Vocational Rehabilitation for the Blind.

(10) Any blind vendor operating such vending facility is subject to the provisions of any ordinance of the county or city in which the vending facility is located requiring a license or permit for the conduct of each business, but such license or permit may be issued free of charge to a blind vendor licensed by Vocational Rehabilitation for the Blind pursuant to federal and state laws.

SOURCES: Codes, 1942, § 7269.5; Laws, 1964, ch. 568, § 1; Laws, 1985, ch. 361, eff from and after July 1, 1985.

Editor's Note — Section 43-5-1 provides that the State Board of Education is the Board of Trustees of the Mississippi School for the Deaf and the Mississippi School for the Blind and wherever the term Board of Trustees of the Mississippi School for the Deaf and Mississippi School for the Blind appears in any law it shall mean the State Board of Education.

Cross References — Provisions concerning Vocational Rehabilitation for the Blind, see §§ 37-33-51 et seq.

Department of Human Services to administer Vocational Rehabilitation for the Blind Law, see § 37-33-54.

Mississippi Schools for the Deaf and Blind, see §§ 43-5-1 et seq.

Sale of merchandise on premises of highway hospitality stations as subject to provisions of this section, see § 65-31-3.

Federal Aspects — Randolph-Sheppard Vending Stand Act, see 20 USCS §§ 107 et seq.

General federal regulations relative to operation of vending facilities by blind persons, see 43 CFR 13.1 et seq.

MISSISSIPPI INDUSTRIES FOR THE BLIND

SEC.	
43-3-101.	Mississippi Industries for the Blind; general powers.
43-3-103.	Board of Directors of MIB; duties of board.
43-3-105.	Duties of executive director.
43-3-107.	Purpose.
43-3-109.	Current operating funds.
43-3-111.	Funds generated by sale of goods.

§ 43-3-101. Mississippi Industries for the Blind; general powers.

There is hereby created and established an agency of the State of Mississippi known as the Mississippi Industries for the Blind, hereinafter referred to as the "MIB." The MIB shall be a body politic and corporate, may acquire and hold real and personal property, may receive, hold and disperse monies appropriated to it by the Legislature of the State of Mississippi received from the federal government, received from the sale of products which it produces, and received from any other sources whatsoever, and may sue and be sued in its name. The MIB is authorized and empowered to establish nonprofit entities for the purpose of defraying costs incurred in the performance of the MIB's purpose and responsibilities.

SOURCES: Laws, 1983, ch. 422, § 1; Laws, 2010, ch. 309, § 1, eff from and after passage (approved Mar. 3, 2010.)

ATTORNEY GENERAL OPINIONS

The Mississippi Industries for the Blind may sell products to state agencies that are manufactured, processed and produced by it in house, and these transactions are exempt from purchase law requirements set forth in Section 31-7-13.

§ 43-3-103. Board of Directors of MIB; duties of board.

(1) From and after July 1, 1997, the MIB shall be governed by a board of directors hereby created, to consist of four (4) persons appointed by the Governor, and three (3) by the Lieutenant Governor, with the advice and consent of the Senate, each of whom shall be a qualified elector of the State of Mississippi. The members of the board of directors appointed by the Governor shall include the following:

(a) One (1) legally blind individual;

(b) One (1) educator with expertise in rehabilitation or the field of blindness;

(c) One (1) individual with at least five (5) years' actual experience in finance or a related field;

(d) One (1) individual with at least five (5) years' actual experience in manufacturing or a related field.

The members of the board of directors appointed by the Lieutenant Governor shall include the following:

(a) One (1) legally blind individual;

(b) One (1) individual with at least five (5) years' actual experience in marketing or a related field; and

(c) One (1) individual who is a licensed practicing attorney.

Initial appointments shall be made April 24, 1997. The Governor shall make initial appointments of two (2) members for two (2) years, one (1) member for three (3) years, and one (1) member for four (4) years to be designated at the time of appointment. The Lieutenant Governor shall make initial appointments of one (1) member for two (2) years, one (1) member for three (3) years, and one (1) member for four (4) years to be designated at the time of appointment. Thereafter, the terms of the members shall be for four (4) years and until their successors are appointed and qualified. In the event of a vacancy during the term of office of an incumbent, the appointing authority shall fill such vacancy, for the unexpired portion of the term, by appointing an individual having the same prerequisite qualifications as required for the vacancy being filled.

(2) The board of directors shall organize by selecting annually from its members a chairman and a vice chairman, and may do all things necessary and convenient for carrying into effect the provisions of this chapter. Each member of the board shall receive a per diem as provided in Section 25-3-69, Mississippi Code of 1972, plus travel and reasonable and necessary expenses incidental to the attendance at each meeting as provided in Section 25-3-41, including mileage.

(3) The Lieutenant Governor may designate the Chairman of the Senate Committee on Public Health and Welfare and another member of the Senate and the Speaker of the House of Representatives may designate the Chairman of the House Committee on Public Health and Human Services and another member of the House to attend any meeting of the Board of Directors of the MIB. The appointing authorities may designate alternate members from their respective houses to serve when the regular designees are unable to attend such meetings of the board. Such legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the board. For attending meetings of the board, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the board without prior approval of the proper committee in their respective houses.

(4) It shall be the duty of the Board of Directors of MIB to:

(a) Appoint and employ an executive director who shall be the executive and administrative head of MIB and who shall serve at the pleasure of the board of directors. The Board of Directors of MIB shall set the compensation of the executive director.

(b) Make and publish policies, rules and regulations, not inconsistent with the terms of this chapter, as may be necessary for the efficient administration and operation of MIB.

(c) Adopt and publish rules and regulations, in its discretion, to establish a policy of sick leave with pay and personal leave with pay for MIB employees and to require that MIB offices be opened and staffed on legal holidays as determined necessary by the board of directors.

(5) There is created a revolving fund in the State Treasury, which shall be used by the Mississippi Industries for the Blind for the purpose of taking advantage of contractual opportunities that would not be available to MIB

without those funds and for the purpose of meeting the obligations of those types of contracts. The fund shall consist of monies that are specifically made available by the Legislature for the purpose of the fund. MIB shall not be authorized to expend any monies in the fund until it has received the prior written approval of the Executive Director of the Department of Finance and Administration and the State Treasurer. MIB shall repay to the fund all monies that it expends from the fund, which monies then may be used by MIB for future contractual opportunities and obligations. Monies in the fund at the end of a fiscal year shall not lapse into the State General Fund, and all interest earned on monies in the fund shall be credited to the fund.

SOURCES: Laws, 1983, ch. 422, § 2; Laws, 1989, ch. 544, § 107; Laws, 1990, ch. 522, § 20; Laws, 1992, ch. 585 § 5; Laws, 1997, ch. 598, § 1; Laws, 1998, ch. 574, § 1; Laws, 2013, ch. 336, § 1, eff from and after July 1, 2013.

Editor's Note — Laws of 1998, ch. 574, § 2 provides as follows:

"SECTION 2. It is the intent of the Legislature that citizens of the State of Mississippi who have physical or mental disabilities shall be afforded the opportunity to compete and participate in employment on an equal basis with persons who are not disabled, if the disabled persons are qualified and able to perform the essential functions of the employment positions that are held or sought."

Cross References — General provisions regarding the reorganization of the executive branch of government, see § 7-17-1 et seq.

State personnel board generally, see §§ 25-9-109 et seq.

Department of Human Services, State Board of Human Services, and Executive Director of Department of Human Services, see § 43-1-2.

Authority to elect to become self-insurer under Worker's Compensation Law, see § 71-3-5.

§ 43-3-105. Duties of executive director.

The executive director of the MIB shall:

(a) Employ all necessary employees at MIB and dismiss them as is necessary;

(b) Administer the daily operations at MIB;

(c) Execute any contracts on behalf of MIB; and

(d) Take any further actions which are necessary and proper toward the achievement of MIB's purposes.

SOURCES: Laws, 1983, ch. 422, § 3, eff from and after July 1, 1983.

§ 43-3-107. Purpose.

The purposes of MIB are as follows:

(a) To establish industries, businesses, shops and workshops primarily for the employment of blind persons and other persons;

(b) To employ blind persons whose training is not otherwise provided for and to market their products; and

(c) To furnish materials, tools and books for use in rehabilitating blind persons for employment, and to do any and all other things for blind persons as it deems advisable.

SOURCES: Laws, 1983, ch. 422, § 4, eff from and after July 1, 1983.

Cross References — Purchases made by state agencies or governing authorities involving items manufactured, processed or produced by the Mississippi Industries for the Blind exempt from § 31-7-13 bidding requirements, see § 31-7-13.

§ 43-3-109. Current operating funds.

Notwithstanding any other law to the contrary, the executive director of the MIB is hereby empowered to maintain sufficient funds to cover disbursements for current operations. The executive director shall deposit any excess funds with any official depository of the state and invest such excess funds as he deems appropriate.

SOURCES: Laws, 1983, ch. 422, § 5, eff from and after July 1, 1983.

§ 43-3-111. Funds generated by sale of goods.

Any funds obtained by MIB as a result of a sale of goods manufactured by it shall be accounted for separate and apart from any funds received by MIB through appropriation from the state legislature. All nonappropriated funds generated by MIB shall not be subject to appropriation by the state legislature.

SOURCES: Laws, 1983, ch. 422, § 6, eff from and after July 1, 1983.

Cross References — Exclusion of nonappropriated funds of Mississippi Industries for the Blind from definition of "public funds", see § 7-7-1.

CHAPTER 5

Schools for the Blind and Deaf

In General 43-5-1
Annual Conference of Representatives 43-5-31

IN GENERAL

Sec.
43-5-1. State Board of Education to be Board of Trustees of Mississippi School for the Deaf and Mississippi School for the Blind; no consolidation of schools required.
43-5-2. Repealed.
43-5-3. Repealed.
43-5-4. Repealed.
43-5-5. Powers and duties of Board.
43-5-7. Powers and duties of State Superintendent of Schools.
43-5-8. Superintendents of Schools for Blind and Deaf; appointment; powers and duties; budget responsibilities.
43-5-9. Repealed.
43-5-11. Annual report of Board.
43-5-13. Braille and lip-reading to be taught.
43-5-15. Pupils; classification; course of training.
43-5-17. Diplomas and certificates of proficiency.
43-5-19. Repealed.
43-5-21. Repealed.

§ 43-5-1. State Board of Education to be Board of Trustees of Mississippi School for the Deaf and Mississippi School for the Blind; no consolidation of schools required.

(1) The State Board of Education shall be the Board of Trustees of the Mississippi School for the Deaf and the Mississippi School for the Blind and shall retain all powers and duties granted by law to the Board of Trustees of the Mississippi School for the Deaf and the Mississippi School for the Blind. Wherever the term Board of Trustees of the Mississippi School for the Deaf and Mississippi School for the Blind appears in any law the same shall mean the State Board of Education.

(2) The provisions of this section shall not be construed to require any consolidation or combination of the Mississippi School for the Deaf and the Mississippi School for the Blind other than where economies can be realized through the common utilization of maintenance personnel and equipment, physical facilities, vehicles and administrative personnel, where the same can be done without impairment of the effectiveness of the educational programs of the two (2) institutions or the welfare of the students.

(3) The provisions of this section shall not be construed to require any consolidation of services involving curriculum or instructional programs of the two (2) institutions.

(4) The State Board of Education, on behalf of each of these institutions, shall have the power to receive and hold property, real and personal, and to accept and use as provided by law, separate from the needs of the other institutions, all bequests, devices and donations made or which may in the future be made to or for it, and shall continue to enjoy the rights and privileges heretofore conferred upon it by law and such as are necessary now, or hereafter, to accomplish the purposes of its own establishment and operation and maintenance hereunder, provided that the same be not inconsistent with or in conflict with this chapter.

SOURCES: Codes, Hutchinson's 1848, ch. 9, art. 43; 1857, ch. 13, art. 2, ch. 14, art. 2; 1871, §§ 2104, 2112; 1880, §§ 669, 678; 1892, §§ 2310, 2320, 2321; 1906, §§ 2539, 2548, 2549; Hemingway's 1917, §§ 4993, 5008, 5009; 1930, §§ 7295, 7304, 7305; 1942, § 6785; Laws, 1924, ch. 309; Laws, 1924, ch. 310; Laws, 1944, ch. 163, § 1; Laws, 1989, ch. 544, § 142; Laws, 1991, ch. 534, § 15, eff from and after July 1, 1991.

Cross References — General provision regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

Appointment of interpreter for the deaf in judicial proceedings and custodial situations, see §§ 13-1-301 et seq.

Education of exceptional children (including children with hearing and visual impairments), see §§ 37-23-1 et seq.

Vocational rehabilitation for the blind, see §§ 37-33-53 et seq.

Implementation and maintenance of post-secondary educational programs of services for hearing-impaired students, see § 37-33-81.

Deposit, to the credit of the school for the deaf and school for the blind, of proceeds from the conveyance of certain lands to the Mississippi Department of Transportation, see § 65-1-163.

Crime of peddling finger alphabet cards or masquerading as deaf person, see § 97-19-37.

§ 43-5-2. Repealed.

Repealed by its own terms eff from and after July 1, 1991.

[Laws, 1989, ch. 544, § 144]

Editor's Note — Former § 43-5-2 created the Mississippi advisory board for education of the deaf.

§ 43-5-3. Repealed.

Repealed by Laws, 1989, ch. 544, § 143, eff from and after July 1, 1989.

[Codes, 1942, § 6785-01; Laws, 1936, ch. 180; Laws, 1944, ch. 163, § 2; Laws, 1968, ch. 415, § 1; Laws, 1974, ch. 529; Laws, 1985, ch. 448]

Editor's Note — Former § 43-5-3 created a board of trustees to govern and control the Mississippi School for the Deaf and the Mississippi School for the Blind.

§ 43-5-4. Repealed.

Repealed by Laws, 1989, ch. 544 § 145, eff from and after July 1, 1991. [Laws, 1989, ch. 544 § 145]

Editor's Note — Former § 43-5-4 created the Mississippi advisory board for education of the blind.

§ 43-5-5. Powers and duties of Board.

The State Board of Education shall adopt all needful rules and regulations for the government of the schools. The State Board of Education shall have authority and control over the pupils and over the properties of each school except where otherwise prescribed by law. The State Board of Education shall provide and maintain libraries for each school, and shall provide for proper and needful recreational facilities for the pupils of the separate schools, and encourage their physical and hygienic and religious advancement, including facilities for church attendances on the Sabbath.

SOURCES: Codes, 1942, § 6785-02; Laws, 1936, ch. 180; Laws, 1944, ch. 163, § 3; Laws, 1968, ch. 416, § 1; Laws, 1977, ch. 338; Laws, 1989, ch. 544, § 146; Laws, 1992, ch. 338, § 1, eff from and after July 1, 1992.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of this section. The word "hygenic" was changed to "hygienic". The Joint Committee ratified the correction at its May 20, 1998, meeting.

Cross References — Establishing vocational departments in schools for the blind and deaf, see § 37-31-15.

Filing of annual report, see § 43-5-11.

Additional powers of Board regarding the annual conference of representatives of state and other agencies, see §§ 43-5-31, 43-5-33.

§ 43-5-7. Powers and duties of State Superintendent of Schools.

The State Superintendent of Education, or his designee, shall make regular and frequent inspections of each of the two (2) schools, and shall personally visit each school at least once a month during every school session, and shall prescribe when and where and by whom and in what quantities all supplies and sustenance of every kind shall be purchased. As far as practicable the purchases for each school shall be on basis of wholesale rather than at retail prices. The State Superintendent of Education shall prepare in writing, monthly, the status of the schools and needs, and the physical and moral conditions of the pupils, and they shall require that the records of each school are preserved, and shall assume such duties as may through legislative enactment hereafter be placed upon the State Superintendent of Education.

SOURCES: Codes, 1942, § 6785-03; Laws, 1936, ch. 180; Laws, 1944, ch. 163, § 4; Laws, 1989, ch. 544, § 147, eff from and after July 1, 1989.

§ 43-5-8. Superintendents of Schools for Blind and Deaf; appointment; powers and duties; budget responsibilities.

The Superintendent of the School for the Blind and the Superintendent of the School for the Deaf and all principals and directors shall be selected by and hold office subject to the will and pleasure of the State Superintendent of Education, subject to the approval of the State Board of Education. The State Board of Education may provide housing for the two (2) superintendents so employed either on- or off-campus. Each superintendent shall at all times maintain supervision of the physical properties of the school he serves unless otherwise provided. All other personnel shall be competitively appointed by the state superintendent and shall be dismissed only for cause in accordance with the rules and regulations of the State Personnel Board. The state superintendent, subject to the approval of the State Personnel Board, shall fix the amount of compensation or expenses of any of the personnel of the schools, which shall be paid upon the requisition of the state superintendent and warrant issued thereunder by the State Auditor out of the funds appropriated by the Legislature in a lump sum upon the basis of budgetary requirements submitted by the Superintendent of Education or out of funds otherwise made available. The entire expense of administering the schools shall never exceed the amount appropriated therefor, plus funds received from sources other than state appropriations. For a violation of this provision, the superintendent shall be liable, and he and the sureties on his bond shall be required to restore any excess. However, if for any reason within the two-year period beginning July 1, 2014, a new Superintendent of the School for the Blind, Superintendent of the School for the Deaf or other administrative or instructional personnel are employed by the department, the employment shall not be subject to the rules and regulations of the State Personnel Board, except as otherwise provided in Section 25-9-127(4).

SOURCES: Laws, 1989, ch. 544, § 149; Laws, 1992, ch. 338, § 2; Laws, 1993, ch. 602, § 14; Laws, 1995, ch. 448, § 1; Laws, 2014, ch. 491, § 7, eff from and after passage (approved Apr. 15, 2014.)

Amendment Notes — The 2014 amendment added the last sentence.

§ 43-5-9. Repealed.

Repealed by Laws, 1989, ch. 544, § 148, eff from and after July 1, 1989.

[Codes, 1942, § 6785-04; Laws, 1936, ch. 180; Laws, 1944, ch. 163, § 5; Laws, 1977, ch. 416]

Editor's Note — Former § 43-5-9 pertained to the selection of a superintendent, instructors and employees for the schools for the deaf and the blind.

§ 43-5-11. Annual report of Board.

The State Board of Education shall make a report to every annual term of the Legislature, showing the needs and condition and status of the School for the Blind and the School for the Deaf. Such report to the Legislature shall show how the money appropriated to the schools has been expended during the preceding year, beginning and ending with the fiscal year of each school. Such report shall exhibit the salaries paid to teachers, officers and employees and each and every item of receipt and expenditure. Each report shall be balanced and shall begin with the balance at the end of the preceding fiscal year. If any property belonging to the state or either school is used for profit such report shall show the expenses incurred in managing the property and the amount received from the same. Such report shall also show a summary of the gross receipts and gross disbursements for each fiscal year and shall show the money on hand at the beginning of the fiscal period of each school preceding each session of the Legislature and the necessary amount of expenses to be incurred from said date to January 1 next following.

SOURCES: Codes, 1892, § 4454; 1906, § 5031; Hemingway's 1917, § 7930; 1930, § 7317; 1942, §§ 6785-02, 6800; Laws, 1936, ch. 180; Laws, 1944, ch. 163, § 3; Laws, 1968, ch. 416, § 1; Laws, 1970, ch. 391, § 7; Laws, 1970, ch. 392, § 1; Laws, 1989, ch. 544, § 150, eff from and after July 1, 1989.

§ 43-5-13. Braille and lip-reading to be taught.

Braille print, designated commonly as revised Braille Grade Two, shall be taught in the School for the Blind. The use of this print shall be included in the high school literary courses of students in such school. Every teacher or instructor in the School for the Deaf, whose duties include oral instruction of pupils, shall become acquainted with the most efficient and advanced methods of lipreading, but every teacher shall also master the manual alphabet in order to be able to communicate with pupils who cannot read lips and in order to aid and participate in student activities outside the classrooms. Every pupil entering the school shall be given oral instruction until it is clearly determined whether he can master lipreading to an extent enabling him to progress satisfactorily in his studies, but manual instruction shall be provided in all subjects for all pupils unable to progress satisfactorily under oral instruction alone. The State Board of Education may set and determine the additional requirements necessary for each teacher or instructor. All teachers and instructors must enter into written contracts of employment to indicate and cover the period for which they are respectively employed. Complete courses in shorthand and typewriting are to be offered at the School for the Deaf.

SOURCES: Codes, 1942, § 6785-05; Laws, 1944, ch. 163, § 6; Laws, 1990, ch. 535, § 15, eff from and after July 1, 1990.

Cross References — Transfer of functions of Schools for Deaf and Blind to State Board of Education, see § 43-5-1.

§ 43-5-15. Pupils; classification; course of training.

Each of the two (2) schools shall be open to receive all pupils eligible to attend it, and shall provide for the proper lodging, maintenance, care and education while in attendance. A student shall not be admitted to or continue as a pupil in the School for the Blind whose acuity of vision is, or becomes, habitually greater than fifty percent (50%) of normal vision, and a pupil shall not be admitted or remain as a pupil in the school for the deaf whose ability to hear is customarily sufficient for him or her to attend the public schools provided for normal children. The board, in its discretion, shall establish the age of eligibility for students seeking admission to the schools. No person shall be admitted to either institution as a pupil who is not a bona fide resident of this state or who is not of good moral character.

The State Board of Education shall fix the amount to be paid, and the terms of payment, by pupils in each school for board, and the conditions of admission, subject to the provisions of this chapter; and shall admit free of charges, upon the certificate of the county superintendent of education of any county in the state, all pupils eligible to attend the school, provided the amount appropriated by the Legislature is sufficient properly to care for the same. Each school shall provide requisite facilities for every pupil therein to acquire as complete a literary and musical education as practicable; and shall provide and maintain an industrial department in which expert instruction shall be given in such trades and crafts as may be suited to render the pupil therein self-sustaining in after life.

SOURCES: Codes, 1942, § 6785-06; Laws, 1944, ch. 163, § 7; Laws, 1958, ch. 295; Laws, 1974, ch. 325; Laws, 1990, ch. 535, § 16, eff from and after July 1, 1990.

Cross References — Transfer of functions of Schools for Deaf and Blind to State Board of Education, see § 43-5-1.

§ 43-5-17. Diplomas and certificates of proficiency.

The State Board of Education shall maintain the two (2) schools at as high a grade of work and education as may be practicable, and shall endeavor to give the pupils the same extent and scope of education that the pupils would receive if attending the public schools of this state; and shall have diplomas or certificates granted unto those pupils who have successfully finished the prescribed courses taught.

SOURCES: Codes, 1942, § 6785-07; Laws, 1944, ch. 163, § 8; Laws, 1990, ch. 535, § 17, eff from and after July 1, 1990.

Cross References — Transfer of functions of Schools for Deaf and Blind to State Board of Education, see § 43-5-1.

§ 43-5-19. Repealed.

Repealed by Laws, 1977, ch. 354, eff from and after passage (approved March 14, 1977).

[Codes, Hemingway's 1917, § 5002; 1930, § 7303; 1942, § 6785-08; Laws, 1910, ch. 131; Laws, 1944, ch. 163, § 9]

Editor's Note — Former § 43-5-19 required the board of trustees of the state schools for the blind and deaf to furnish a person graduating from the school for the blind, having acquired skill in a particular trade, with the necessary tools to carry on that trade.

§ 43-5-21. Repealed.

Repealed by Laws, 1992, ch. 338, § 3, eff from and after July 1, 1992.

[Codes, 1942, § 6785-11; Laws, 1956, ch. 286; Laws, 1958, ch. 304, §§ 1-3; Am, Laws, 1990, ch. 535, § 18]

Editor's Note — Former § 43-5-21 required the State Board of Education to furnish certain training and employment services for the deaf.

ANNUAL CONFERENCE OF REPRESENTATIVES

SEC.	
43-5-31.	Annual conference of representatives of state and other agencies.
43-5-33.	Appointment of director of conference.
43-5-35.	Notice of conference.
43-5-37.	Duties of conference director.
43-5-39.	Report of activities and findings of conference.

§ 43-5-31. Annual conference of representatives of state and other agencies.

The Department of Education, hereinafter called "department," shall annually call a conference of representatives of state agencies, other governmental and private agencies, and institutions in the manner set forth by Sections 43-5-31 through 43-5-39 for the general purpose of the coordination of programs relating to the training, education and assistance of blind and deaf citizens of the State of Mississippi.

SOURCES: Laws, 1974, ch. 333, § 1; Laws, 1989, ch. 544, § 151, eff from and after July 1, 1989.

§ 43-5-33. Appointment of director of conference.

The State Superintendent of Education shall appoint a director for this conference who may be an employee of the department or an employee of either the School for the Deaf or the School for the Blind.

SOURCES: Laws, 1974, ch. 333, § 2; Laws, 1989, ch. 544, § 152, eff from and after July 1, 1989.

§ 43-5-35. Notice of conference.

The director shall publish notification of the conference in the following manner:

(a) Not less than thirty (30) days prior to the date of the conference the director shall mail notices of this meeting to the executive officer of any agency or institution of the State of Mississippi which, in the opinion of the board, is charged with or can contribute to the education, training or assistance of blind or deaf citizens of the State of Mississippi. It shall be the duty of such executive officer upon receipt of such notification to attend or appoint an officer or employee of his agency to attend and participate in the conference.

The notice required by this subsection shall include time and place of the conference and reference to Sections 43-5-31 through 43-5-39 regarding the required attendance of a representative from a designated agency.

(b) The director shall cause notice to be published in a newspaper or newspapers having general circulation throughout the state. Such notice shall appear at least three (3) times with the first publication appearing not less than twenty-five (25) days prior to the date of the conference and the last publication appearing not more than five (5) days prior to the date of the conference.

(c) The director is directed and authorized to utilize any mass communication media that may be available at no cost to the board to publicize the conference.

(d) The director shall notify private organizations and persons known to have an interest in the education, training and assistance of the deaf and blind of the meeting and to invite their attendance and participation.

SOURCES: Laws, 1974, ch. 333, § 3, eff from and after Jan 1, 1975.

Cross References — Transfer of functions of Schools for Deaf and Blind to State Board of Education, see § 43-5-1.

§ 43-5-37. Duties of conference director.

The director shall arrange and organize the conference and is charged specifically with the following duties regarding the conference:

(a) The director shall arrange for a meeting hall, seating, public address systems and appurtenant equipment and supplies.

(b) The director shall organize the program and set an agenda for the conference.

(c) The director is authorized to arrange meetings of groups who are concerned with the problems of the blind or the deaf. Such meeting may be held before or during the conference; however, there shall be at least one (1) general session of all participants during the conference.

SOURCES: Laws, 1974, ch. 333, § 4, eff from and after Jan 1, 1975.

Cross References — Transfer of functions of Schools for Deaf and Blind to State Board of Education, see § 43-5-1.

§ 43-5-39. Report of activities and findings of conference.

The board shall include a report of the activities and findings of the conference in the annual report of the Mississippi School for the Deaf and the Mississippi School for the Blind.

SOURCES: Laws, 1974, ch. 333, § 5, eff from and after Jan 1, 1975.

Cross References — Transfer of functions of Schools for Deaf and Blind to State Board of Education, see § 43-5-1.

CHAPTER 6

Rights and Liabilities of Persons with Disabilities

Article 1. General Provisions 43-6-1
Article 3. Public Building Facilities for Persons with Disabilities 43-6-101
Article 5. Mississippi Support Animal Act 43-6-151
Article 7. Use of Respectful References to Persons With Disabilities 43-6-171
Article 9. Competitive Employment Opportunities for Persons with Disabilities 43-6-201

ARTICLE 1.

GENERAL PROVISIONS.

Sec.	
43-6-1.	Definitions.
43-6-3.	Right to use public facilities.
43-6-5.	Right of access to public conveyances and accommodations.
43-6-7.	Right to be accompanied by guide dog or hearing ear dog.
43-6-9.	Blind and deaf pedestrians.
43-6-11.	Penalties.
43-6-13.	White Cane Safety Days.
43-6-15.	Employment in government service.

§ 43-6-1. Definitions.

As used in this article, “blind,” “totally blind,” “visually handicapped,” and “partially blind” mean having central visual acuity not to exceed 20/200 in the better eye, with corrected lenses as measured by the Snellen test, or having visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle not greater than twenty (20) degrees.

As used in this article, “deaf person” means a person who cannot readily understand spoken language through hearing alone with or without a hearing aid, and who may also have a speech defect which renders his speech unintelligible to most people with normal hearing.

SOURCES: Codes, 1942, § 7158-25; Laws, 1972, ch. 451, § 5; Laws, 1978, ch. 402, § 1, eff from and after passage (approved March 23, 1978).

Cross References — Appointment of interpreter for the deaf in judicial proceedings and custodial situations, see §§ 13-1-301 et seq.

Identification cards issued to blind persons by the Department of Public Safety to be valid for ten years, see § 45-35-7.

Federal Aspects — Americans with Disabilities Act of 1990, see 42 USCS §§ 12101 et seq.

RESEARCH REFERENCES

Practice References. Jonathan R. Mook, Americans with Disabilities Act: Public Accommodations and Commercial Facilities (Matthew Bender).

§ 43-6-3. Right to use public facilities.

Blind persons, visually handicapped persons, deaf persons and other physically disabled persons shall have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

SOURCES: Codes, 1942, § 7158-21; Laws, 1972, ch. 451, § 1; Laws, 1978, ch. 402, § 2, eff from and after passage (approved March 23, 1978).

Cross References — Installation of ramps at municipal crosswalks for the benefit of the physically handicapped, see § 21-37-6.

Implementation and maintenance of post-secondary educational programs of services for hearing-impaired students, see § 37-33-81.

Federal Aspects — Public accommodations under the Americans with Disabilities Act of 1990, see 42 USCS §§ 12101 et seq.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

Who is recipient of, and what constitutes program or activity receiving, federal financial assistance for purposes of § 504 of Rehabilitation Act (29 U.S.C.S. § 794), which prohibits any program or activity receiving financial assistance from discriminating on basis of disability. 160 A.L.R. Fed. 297.

When are public entities required to provide services, programs, or activities to disabled individuals under Americans with Disabilities Act, 42 U.S.C.S. § 12132. 160 A.L.R. Fed. 637.

When does a public entity discriminate against individuals in its provision of services, programs, or activities under the Americans with Disabilities Act, 42 U.S.C.S. § 12132. 163 A.L.R. Fed. 339.

Law Reviews. Gerson and Addison, Handicapped discrimination law and the Americans with Disabilities Act. 11 Miss. C. L. Rev. 233, Spring, 1991.

Irby, The ADA: the employer's perspective. 11 Miss. C. L. Rev. 263, Spring, 1991.

Mikochik, Employment discrimination against Americans with disabilities. 11 Miss. C. L. Rev. 255, Spring, 1991.

Practice References. Jonathan R. Mook, Americans with Disabilities Act: Public Accommodations and Commercial Facilities (Matthew Bender).

§ 43-6-5. Right of access to public conveyances and accommodations.

Blind persons, visually handicapped persons, deaf persons and other physically disabled persons shall be entitled to full and equal access, as are other members of the general public, to accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

SOURCES: Codes, 1942, § 7158-22; Laws, 1972, ch. 451, § 2; Laws, 1978, ch. 402, § 3, eff from and after passage (approved March 23, 1978).

Cross References — Appointment of interpreter for the deaf in judicial proceedings and custodial situations, see §§ 13-1-301 et seq.

Installation of ramps at municipal crosswalks for the benefit of the physically handicapped, see § 21-37-6.

Right to be accompanied by service dog, see § 43-6-7.

Federal Aspects — Public accommodations under the Americans with Disabilities Act of 1990, see 42 USCS §§ 12101 et seq.

RESEARCH REFERENCES

ALR. Contributory negligence of physically handicapped or intoxicated person in boarding or alighting from standing train or car. 30 A.L.R.2d 334.

Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

Who is recipient of, and what constitutes program or activity receiving, federal financial assistance for purposes of § 504 of Rehabilitation Act (29 U.S.C.S. § 794), which prohibits any program or activity receiving financial assistance from discriminating on basis of disability. 160 A.L.R. Fed. 297.

When are public entities required to provide services, programs, or activities to disabled individuals under Americans with Disabilities Act, 42 U.S.C.S. § 12132. 160 A.L.R. Fed. 637.

When does a public entity discriminate against individuals in its provision of services, programs, or activities under the Americans with Disabilities Act, 42 U.S.C.S. § 12132. 163 A.L.R. Fed. 339.

Am Jur. 13 Am. Jur. 2d, Carriers § 762.

Law Reviews. Gerson and Addison, Handicapped discrimination law and the Americans with Disabilities Act. 11 Miss. C. L. Rev. 233, Spring, 1991.

Irby, The ADA: the employer's perspective. 11 Miss. C. L. Rev. 263, Spring, 1991.

Mikochik, Employment discrimination against Americans with disabilities. 11 Miss. C. L. Rev. 255, Spring, 1991.

Practice References. Jonathan R. Mook, Americans with Disabilities Act: Public Accommodations and Commercial Facilities (Matthew Bender).

§ 43-6-7. Right to be accompanied by guide dog or hearing ear dog.

Every totally or partially blind person and every deaf person shall have the right to be accompanied by a guide dog or hearing ear dog on a blaze orange leash, especially trained for the purpose, in any of the places specified in Section 43-6-5 without being required to pay an extra charge for the guide dog or hearing ear dog on a blaze orange leash. However, such person shall be liable for any damage done to the premises or facilities by such dog.

SOURCES: Codes, 1942, § 7158-23; Laws, 1972, ch. 451, § 3; Laws, 1978, ch. 402, § 4, eff from and after passage (approved March 23, 1978).

Cross References — Mississippi Support Animal Act, § 43-6-151 et seq.

Penalty for harassment of guide or leader dogs, see § 97-41-21.

§ 43-6-9. Blind and deaf pedestrians.

A totally or partially blind pedestrian or deaf person shall have all the rights and privileges conferred by law upon other persons in any of the places, accommodations, or conveyances specified in Sections 43-6-3 and 43-6-5, notwithstanding the fact that such person is not carrying a predominantly white cane (with or without a red tip), or using a guide dog or hearing ear dog on a blaze orange leash. The failure of a totally or partially blind person or deaf person to carry such a cane or to use such a guide dog or hearing ear dog on a blaze orange leash shall not constitute negligence per se.

SOURCES: Codes, 1942, § 7158-24; Laws, 1972, ch. 451, § 4; Laws, 1978, ch. 402, § 5, eff from and after passage (approved March 23, 1978).

Cross References — Mississippi Support Animal Act, see § 43-6-151 et seq.

Provisions of Uniform Highway Traffic Regulation Law as to use of cane or guide dog by blind pedestrian, see § 63-3-1111.

§ 43-6-11. Penalties.

Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 43-6-3 and 43-6-5, or otherwise interferes with the rights of a totally or partially blind person, deaf person or other disabled person under Sections 43-6-3 through 43-6-7, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars ($100.00) or by imprisonment in the county jail for a period not exceeding sixty (60) days, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 7158-27; Laws, 1972, ch. 451, § 7; Laws, 1978, ch. 402, § 6, eff from and after passage (approved March 23, 1978).

Cross References — Penalty for harassment of guide or leader dogs, see § 97-41-21.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Construction and effect of state legislation forbidding discrimination in housing on account of physical handicap. 28 A.L.R.4th 685.

Law Reviews. Gerson and Addison, Handicapped discrimination law and the Americans with Disabilities Act. 11 Miss. C. L. Rev. 233, Spring, 1991.

Irby, The ADA: the employer's perspective. 11 Miss. C. L. Rev. 263, Spring, 1991.

Mikochik, Employment discrimination against Americans with disabilities. 11 Miss. C. L. Rev. 255, Spring, 1991.

§ 43-6-13. White Cane Safety Days.

Each year the governor shall publicly proclaim October 15 as White Cane Safety Day. He shall issue a proclamation in which:

(a) Comments shall be made upon the significance of this article.

(b) Citizens of the state are called upon to observe the provisions of this article and to take precautions necessary to the safety of disabled persons.

(c) Citizens of the state are reminded of the policies with respect to disabled persons declared in this article and be urged to cooperate in giving effect to them.

(d) Emphasis shall be made on the need of the citizenry to be aware of the presence of disabled persons in the community and to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort, and other places to which the public is invited, and to offer assistance to disabled persons upon appropriate occasions.

(e) It is the policy of this state to encourage and enable blind persons, visually handicapped persons, and other physically disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment.

SOURCES: Codes, 1942, § 7158-26; Laws, 1972, ch. 451, § 6, eff from and after passage (approved May 5, 1972).

§ 43-6-15. Employment in government service.

No person shall be refused employment in state services, the service of political subdivisions of the state, in public schools, or any other employment supported in whole or in part by public funds, by reason of his being blind, visually handicapped, deaf, or otherwise physically handicapped, unless such disability shall materially affect the performance of the work required by the job for which such person applies.

SOURCES: Laws, 1974, ch. 381; Laws, 1978, ch. 402, § 7, eff from and after passage (approved March 23, 1978).

RESEARCH REFERENCES

ALR. What constitutes handicap under state legislation forbidding job discrimination on account of handicap. 82 A.L.R.4th 26.

What constitutes substantial limitation on major life activity of working for purposes of Americans with Disabilities Act (42 USCS §§ 12101-12213). 141 A.L.R. Fed. 603.

Law Reviews. Gerson and Addison, Handicapped discrimination law and the Americans with Disabilities Act. 11 Miss. C. L. Rev. 233, Spring, 1991.

Irby, The ADA: the employer's perspective. 11 Miss. C. L. Rev. 263, Spring, 1991.

Mikochik, Employment discrimination against Americans with disabilities. 11 Miss. C. L. Rev. 255, Spring, 1991.

ARTICLE 3.

PUBLIC BUILDING FACILITIES FOR PERSONS WITH DISABILITIES.

SEC.
43-6-101. Applicability of standards.
43-6-103. Primary entrances.
43-6-105. Public parking.
43-6-107. Ramps.
43-6-109. Steps and stairs.
43-6-111. Floors.
43-6-113. Toilet facilities.
43-6-115. Water supply.
43-6-117. Elevators.
43-6-119. Switches and controls.
43-6-121. Removal of hazards.
43-6-123. Enforcement of article.
43-6-125. Public buildings designed or equipped to accommodate persons with disabilities to be marked by signs.

§ 43-6-101. Applicability of standards.

The State Building Commission, the boards of supervisors of each county, the governing authorities of each municipality and the governing authorities of all political subdivisions of this state, pursuant to an order of the state board of health, shall cause to be constructed such entrance ramps to facilitate ingress and egress in each public building under the supervision of the said governing bodies, including buildings which presently exist, which are presently under construction, or which may be constructed after July 1, 1972. The standards and specifications set forth in Sections 43-6-103 through 43-6-121 shall apply to all buildings of assembly, educational institutions, office buildings, and other public buildings which are constructed in whole or in part by the use of state, county or municipal funds, or the funds of any instrumentality of the state, except where such compliance is impractical in the opinion of the state board of health. All such buildings and facilities in this state on which design contracts are awarded after July 1, 1972, shall conform to each of the standards and specifications prescribed therein.

SOURCES: Codes, 1942, § 7015-101; Laws, 1972, ch. 516, § 1, eff from and after July 1, 1972.

Editor's Note — Section 31-11-1 provides that wherever the term "State Building Commission" or "Building Commission" appears in the laws of the state of Mississippi, it shall be construed to mean the Governor's Office of General Services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Installation of ramps at municipal crosswalks for the benefit of the physically handicapped, see § 21-37-6.

Federal Aspects — Public accommodations under the Americans with Disabilities Act of 1990, see 42 USCS §§ 12101 et seq.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

Construction and application of Architectural Barriers Act (42 USCS §§ 4151-4157) providing for design and construction of public buildings to accommodate physically handicapped. 78 A.L.R. Fed. 877.

Law Reviews. Gerson and Addison, Handicapped discrimination law and the Americans with Disabilities Act. 11 Miss. C. L. Rev. 233, Spring, 1991.

Irby, The ADA: the employer's perspective. 11 Miss. C. L. Rev. 263, Spring, 1991.

Mikochik, Employment discrimination against Americans with disabilities. 11 Miss. C. L. Rev. 255, Spring, 1991.

Practice References. Jonathan R. Mook, Americans with Disabilities Act: Public Accommodations and Commercial Facilities (Matthew Bender).

§ 43-6-103. Primary entrances.

(1) At least one (1) primary entrance to each building shall be accessible by individuals in wheelchairs from a point of vehicular arrival and such access shall be by means of a walk or walks at least forty-eight (48) inches wide and having a gradient not greater than five percent (5%), or eight and thirty-three one-hundredths percent (8.33%) with handrails. These walks shall be of a continuing surface, not interrupted by steps or abrupt changes in level. Wherever walks cross other walks, driveways, or parking lots they shall blend to a common level. A walk shall have a level platform at the top which is at least five (5) feet by five (5) feet, if a door swings out onto the platform or toward the walk. This platform shall extend at least one (1) foot beyond each side of the doorway. A walk shall have a level platform at least three (3) feet deep and five (5) feet wide, if the door does not swing onto the platform or toward the walk. This platform shall extend at least one (1) foot beyond each side of the doorway.

(2) Each building shall have at least one (1) primary entrance which is accessible to individuals in wheelchairs. In multi-story buildings, such primary entrance shall provide access to an elevator either on a level plane or by ramp.

Doors shall have a clear opening of no less than thirty-two (32) inches when fully open and shall be operable by a single effort. The floor on the inside and outside of each doorway shall be level for a distance of five (5) feet from the door in the direction the door swings and shall extend one (1) foot beyond each side of the door. Sharp inclines and abrupt changes in level shall be avoided at doorsills. As much as practicable, thresholds shall be flush with the floor.

SOURCES: Codes, 1942, § 7015-102(a, d); Laws, 1972, ch. 516, § 2, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-105. Public parking.

Where public parking is provided, at least one (1) parking area shall be made accessible to the building by either placing it at the grade level of one (1) floor of the building or providing ramps at curbs or steps between the parking area and the building.

SOURCES: Codes, 1942, § 7015-102(b); Laws, 1972, ch. 516, § 2, eff from and after July 1, 1972.

Cross References — Enactment of an ordinance reserving parking spaces for handicapped persons, see § 27-19-56.

RESEARCH REFERENCES

ALR. Validity of regulation providing for reserved parking spaces or parking priority on publicly owned property for members of a designated group. 70 A.L.R.3d 1323.

Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-107. Ramps.

Where ramps are necessary or desired, they shall conform to the following specifications:

(a) The ramp shall not have a slope greater than one (1) foot rise in twelve (12) feet of run, or eight and thirty-three one-hundredths percent (8.33%), or four (4) degrees fifty (50) minutes.

(b) Any such ramp shall have a handrail on at least one (1) side, and preferably two (2) sides. The top of handrails shall be thirty-two (32) inches above the surface of the ramp and shall extend one (1) foot beyond the top and bottom of the ramp.

(c) The ramp shall be at least thirty-two (32) inches wide (inside clear measurements) and have a surface that is nonslip.

(d) If a door swings out onto the platform or toward the ramp, the platform of the ramp shall be at least five (5) feet by five (5) feet. This platform size shall be clear of door swing.

(e) If the door does not swing onto the platform or toward the ramp, this platform shall be at least three (3) feet deep and five (5) feet wide. This platform size shall be clear of door swing.

(f) The bottom of the ramp shall have at least a six-foot level run.

(g) Where the ramp exceeds thirty (30) feet in length, level platforms shall be provided at thirty-foot intervals. Level platforms shall also be provided at turns in the ramp. Platforms shall be at least thirty-two (32) inches wide by five (5) feet long.

SOURCES: Codes, 1942, § 7015-102(c); Laws, 1972, ch. 516, § 2, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-109. Steps and stairs.

Steps in stairs shall be designed wherever practicable so as not to have abrupt (square) nosing. Stairs shall have handrails thirty-two (32) inches high as measured from the tread at the face of the riser. Stairs shall have at least one (1) handrail that extends at least eighteen (18) inches beyond the top step and beyond the bottom step. Steps should, wherever possible, and in conformation with existing step formulas, have risers that do not exceed seven (7) inches.

SOURCES: Codes, 1942, § 7015-102(e); Laws, 1972, ch. 516, § 2, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-111. Floors.

Floors shall wherever practicable have a surface that is nonslip. Floors on the same story shall be of a common level throughout or be connected by a ramp in accord with Section 43-6-107.

SOURCES: Codes, 1942, § 7015-102(f); Laws, 1972, ch. 516, § 2, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-113. Toilet facilities.

(1) An appropriate number of toilet rooms shall be accessible to, and usable by, the physically handicapped and shall have space to allow traffic of individuals in wheelchairs.

(2) Toilet rooms for each sex shall have at least one (1) toilet stall that: (a) is three (3) feet wide; (b) is at least four (4) feet eight (8) inches, preferably five (5) feet deep; (c) has a door (where doors are used) that is thirty-two (32) inches wide and swings out; (d) has handrails on each side, thirty-three (33) inches high and parallel to the floor, one and one-half (1½) inches in outside diameter, with one and one-half (1½) inches clearance between rail and wall, and fastened securely at ends and center; and (e) has a water closet with the seat twenty (20) inches from the floor.

(3) Such toilet rooms shall have at least one (1) lavatory with a narrow apron, which when mounted at standard height is usable by individuals in wheelchairs, or shall have lavatories mounted higher, when particular designs demand, so that they are usable by individuals in wheelchairs.

(4) Mirrors and shelves shall be provided above such lavatory at a height as low as practicable and no higher than forty (40) inches above the floor, measured from the top of the shelf and the bottom of the mirror.

(5) Toilet rooms for men which have wall-mounted urinals shall have an appropriate number of such urinals with the opening of the basin nineteen (19) inches from the floor, or shall have floor-mounted urinals that are on level with the main floor of the toilet room.

(6) Toilet rooms shall have an appropriate number of towel racks, towel dispensers, and other dispensers and disposal units mounted with openings of dispensers or receptacles no higher than forty (40) inches from the floor.

SOURCES: Codes, 1942, § 7015-102(g); Laws, 1972, ch. 516, § 2, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-115. Water supply.

An appropriate number of water fountains or other water dispensing means shall be accessible to, and usable by, the physically disabled. Water fountains or coolers shall have up-front spouts and controls. Water fountains or coolers shall be hand-operated or hand-and-foot operated.

SOURCES: Codes, 1942, § 7015-102(h); Laws, 1972, ch. 516, § 2, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-117. Elevators.

Where elevators are to be provided, at least one (1) bank of elevators, or one (1) single elevator if installed in single units, shall be accessible to, and usable by, persons with physical disabilities at all levels normally used by the general public. Such bank of elevators or such single elevator shall be designed to allow for traffic by wheelchairs.

SOURCES: Codes, 1942, § 7015-102(i); Laws, 1972, ch. 516, § 2, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-119. Switches and controls.

Switches and controls for light, heat, ventilation, windows, draperies, elevators, fire alarms, and all similar controls of frequent or essential use shall be placed within the reach of individuals in wheelchairs, and not to exceed forty-eight (48) inches from the floor level.

SOURCES: Codes, 1942, § 7015-102(j); Laws, 1972, § 516, § 2, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-121. Removal of hazards.

Every effort shall be exercised to obviate all hazards to individuals with physical disabilities.

SOURCES: Codes, 1942, § 7015-102(k); Laws, 1972, ch. 516, § 2, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-123. Enforcement of article.

The State Board of Health shall be responsible for reviewing plans and specifications of the proposed building or improvements to determine whether the buildings referred to in Section 43-6-101 will be in compliance with this article. The board shall collect a fee from the state, county, municipality or other public agency proposing to contract for the construction, to cover the cost of such review. The fee shall be one-half of one percent (½ of 1%) of the estimated cost, with a maximum fee of one hundred dollars ($100.00), calculated and paid on the basis of the engineering estimate or architect's estimate of the total cost of the particular work or improvement, which estimate is to be furnished to the state board of health along with the plans and specifications.

The State Board of Health shall not require that those state-funded buildings in existence or presently under construction comply with this article, except as to entrance ramps to facilitate ingress and egress; however, all buildings affected by this article on which design contracts are awarded after

July 1, 1972, shall comply with such specifications. The state board of health is hereby further authorized to promulgate any rules that, in its discretion, are necessary to perform the duties delegated it by this article.

SOURCES: Codes, 1942, § 7015-103; Laws, 1972, ch. 516, § 3, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

§ 43-6-125. Public buildings designed or equipped to accommodate persons with disabilities to be marked by signs.

All public buildings constructed or remodeled in accordance with the standards and requirements of Sections 43-6-101 through 43-6-123, or containing facilities that are in compliance therewith, shall display a symbol which is white on a blue background. The specifications for this symbol shall be furnished by the state board of health indicating the location of such facilities designed for the physically handicapped. When a building contains an entrance other than the main entrance which is ramped or level for use by the physically handicapped persons, a sign showing its location shall be posted at or near the main entrance which shall be visible from the adjacent public sidewalk or way.

SOURCES: Laws, 1975, ch. 369, eff from and after passage (approved March 20, 1975).

RESEARCH REFERENCES

ALR. Validity and construction of state statutes requiring construction of handicapped access facilities in buildings open to public. 82 A.L.R.4th 121.

ARTICLE 5.

MISSISSIPPI SUPPORT ANIMAL ACT.

SEC.
43-6-151. Short title.
43-6-153. Definitions.
43-6-155. Support animals' access to public places; limitations.

§ 43-6-151. Short title.

Sections 43-6-151 through 43-6-155 shall be known as and may be cited as the "Mississippi Support Animal Act."

SOURCES: Laws, 1989, ch. 386, § 1; Laws, 2000, ch. 523, § 1, eff from and after July 1, 2000.

§ 43-6-153. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Mobility impaired person" means any person, regardless of age, who is subject to a physiological defect or deficiency regardless of its cause, nature, or extent that renders the person unable to move about without the aid of crutches, a wheelchair or any other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or to perform any related function.

(b) "Blind" means either of the following:

(i) Vision 20/200 or less in the better eye with proper correction.

(ii) Field defect in the better eye with proper correction which contracts the peripheral field so that the diameter of the visual field subtends an angle no greater than twenty (20) degrees.

SOURCES: Laws, 1989, ch. 386, § 2, eff from and after July 1, 1989.

§ 43-6-155. Support animals' access to public places; limitations.

(1) Any blind person, mobility impaired person or hearing impaired person who uses a dog or other animal specifically trained as a guide, leader, listener or for any other assistance necessary to assist such blind, mobility impaired or hearing impaired person in day-to-day activities shall be entitled to the full and equal accommodations, advantages, facilities and privileges of all public conveyances, hotels, lodging places, businesses open to the public for the sale of any goods or services and all places of public accommodation, amusement, or resort and other places to which the general public is invited, and may take the dog or other animal into conveyances and places, subject only to the conditions and limitations applicable to all persons not so accompanied, except that:

(a) The dog or other animal shall not occupy a seat in any public conveyance.

(b) The dog or other animal shall be upon a leash or otherwise sufficiently restrained in a manner appropriate for the animal while using the facilities of a common carrier.

(2) Trainers of support dogs and other support animals shall have the same rights of accommodations, advantages, facilities and privileges with support animals-in-training as those provided to blind, mobility impaired or hearing impaired persons with support animals under this section.

(3) No person shall deprive a blind, mobility impaired, hearing impaired person, or a support animal trainer of any of the advantages, facilities or privileges provided in this section, nor charge such blind, mobility impaired or hearing impaired person or support animal trainer a fee or charge for the use of the animal.

SOURCES: Laws, 1989, ch. 386, § 3; Laws, 1999, ch. 478, § 1; Laws, 2000, ch. 523, § 2, eff from and after July 1, 2000.

Cross References — Right of blind or deaf person to be accompanied by guide dog or hearing ear dog, see § 43-6-7.

Provisions of Uniform Highway Traffic Regulation Law as to use of guide dog by blind pedestrian, see § 63-3-1111.

Penalty for harassment of guide or leader dogs, see § 97-41-21.

ARTICLE 7.

USE OF RESPECTFUL REFERENCES TO PERSONS WITH DISABILITIES.

SEC.	
43-6-171.	Legislative drafting offices and state agencies to use certain respectful references to persons with disabilities in the preparation of legislation and rules.

§ 43-6-171. Legislative drafting offices and state agencies to use certain respectful references to persons with disabilities in the preparation of legislation and rules.

(1) The Legislature recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes towards people with disabilities. Many of the terms currently used diminish the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members. The Legislature finds it necessary to clarify preferred language for new and revised laws and rules by requiring the use of terminology that puts the person before the disability.

(2) The legislative drafting offices of the House and Senate are directed to avoid all references to the terms "disabled," "developmentally disabled," "mentally disabled," "mentally ill," "mentally retarded," "handicapped," "cripple" and "crippled," in any new statute, memorial or resolution, and to change those references in any existing statute, memorial or resolution as sections including those references are otherwise amended by law. The drafting offices are directed to replace the terms referenced above as appropriate with the following revised terminology: "persons with disabilities," "persons with developmental disabilities," "persons with mental illness" and "persons with intellectual or cognitive disabilities."

(3) No statute, memorial or resolution is invalid because it does not comply with this section.

(4) All state agency orders creating new rules, or amending existing rules, shall be formulated in accordance with the requirements of subsection (1) of this section regarding the use of respectful language.

(5) No agency rule is invalid because it does not comply with this section.

SOURCES: Laws, 2005, ch. 474, § 1; Laws, 2010, ch. 476, § 69; Laws, 2015, ch. 460, § 1, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment, in (2), substituted "persons" for "individuals" throughout, inserted "or cognitive" preceding "disabilities" at the end, and made minor stylistic changes.

ARTICLE 9.

COMPETITIVE EMPLOYMENT OPPORTUNITIES FOR PERSONS WITH DISABILITIES.

SEC.
43-6-201. Legislative findings and purpose.
43-6-203. Definitions.
43-6-205. Competitive employment opportunities in fully integrated work settings to be considered first and priority option when planning or providing services and supports to persons with disabilities.
43-6-207. Implementation of policy by state agencies.
43-6-209. Oversight of implementation of policy by Disability Resource Commission.
43-6-211. Article not to prohibit appropriate use of certain other employment options, or require expenditure of funds or grant enforceable right or cause of action.

§ 43-6-201. Legislative findings and purpose.

The Mississippi Legislature finds that the benefits of meaningful work have significance and importance to all working-age persons, including persons with disabilities. In order to achieve meaningful and competitive employment for persons with disabilities, employment opportunities in fully integrated work settings shall be, to the extent practicable, the first and priority option explored in planning and providing services and supports for working-age persons with disabilities.

SOURCES: Laws, 2015, ch. 469, § 1, eff from and after July 1, 2015.

§ 43-6-203. Definitions.

As used in this article, the following words shall have the following meaning, unless the context otherwise requires:

(a) "Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which a person with a disability is compensated in a manner consistent with applicable wage-and-hour laws. Pay shall be comparable to the customary wage and level of benefits paid by the employer for the same or similar work performed by persons without disabilities.

(b) "Disability" means, with respect to a person, a physical or mental impairment that substantially limits one or more major life activities of such person as defined in the Americans with Disabilities Act of 1990, as amended. A "disability" does not include brief periods of intoxication caused by alcohol or drugs or dependence upon or addiction to any alcohol or drugs.

(c) "Integrated setting" means a setting typically found in the community in which persons with disabilities interact with persons without disabilities (other than disability service providers) to a comparable extent that persons without disabilities in comparable positions interact with other persons.

(d) "Working age" means fourteen (14) years of age or older in accordance with Section 71-7-17.

SOURCES: Laws, 2015, ch. 469, § 2, eff from and after July 1, 2015.

Federal Aspects — Americans with Disabilities Act of 1990 generally, see 42 USCS § 12101 et seq.

§ 43-6-205. Competitive employment opportunities in fully integrated work settings to be considered first and priority option when planning or providing services and supports to persons with disabilities.

It is declared to be the policy of this state that competitive employment in an integrated setting shall be, to the extent practicable, considered the first and priority option when planning or providing services and supports to persons with disabilities who are of working age. All state agencies that provide services and support to persons with disabilities, and/or employment-related services, shall, using available resources, follow this policy and ensure that it is effectively implemented in their programs and services; however, nothing in this article shall supersede any agency's ability to fulfill the agency's duties and requirements mandated by federal statutes. Nothing in this article shall be construed to limit or disallow any disability benefits to which a person with a disability who is unable to be employed as contemplated by this article would otherwise be entitled. Nothing in this article shall be construed to require any state agency or other employer to give preference to hiring persons with disabilities or to prohibit any employment relationship or program that is otherwise permitted under applicable law. Any person with a disability who is employed by a state agency must meet the minimum qualifications and requirements for the position in which the person is employed.

SOURCES: Laws, 2015, ch. 469, § 3, eff from and after July 1, 2015.

§ 43-6-207. Implementation of policy by state agencies.

(1) All state agencies that provide services to persons with disabilities and/or employment services shall coordinate efforts and shall collaborate within and among such agencies to ensure that state programs, policies, procedures and funding support competitive employment in integrated settings for persons with disabilities who are of working age. All such state agencies shall, whenever feasible, share data and information across systems in order to track progress toward full implementation of this article. All such state agencies are encouraged to adopt measurable goals and objectives to promote assessment of progress in implementing this article.

(2) State agencies are authorized to adopt rules and regulations to implement this article.

SOURCES: Laws, 2015, ch. 469, § 4, eff from and after July 1, 2015.

§ 43-6-209. Oversight of implementation of policy by Disability Resource Commission.

The Disability Resource Commission as described in Section 43-30-1 is directed to provide the monitoring and oversight of the implementation of this article by state agencies.

SOURCES: Laws, 2015, ch. 469, § 5, eff from and after July 1, 2015.

§ 43-6-211. Article not to prohibit appropriate use of certain other employment options, or require expenditure of funds or grant enforceable right or cause of action.

(1) Nothing in this article shall be interpreted to prohibit the appropriate use of programs known as center-based employment, employment centers, skill development centers, vocational rehabilitation centers, and/or other employment options.

(2) Nothing in this article shall be interpreted to require the expenditure of funds on any particular program or at any particular level or to grant any person or organization a judicially enforceable right or cause of action.

SOURCES: Laws, 2015, ch. 469, § 7, eff from and after July 1, 2015.

CHAPTER 7

Council on Aging

In General 43-7-1
Long-Term Care Facilities Ombudsman Act 43-7-51

IN GENERAL

Sec.
43-7-1. Department of Human Services to be Council on Aging.
43-7-3 and 43-7-5. Repealed.
43-7-7. Duties of Department of Human Services.
43-7-9 and 43-7-11. Repealed.

§ 43-7-1. Department of Human Services to be Council on Aging.

The Department of Human Services shall be the Council on Aging and shall retain all powers and duties granted by law to the Council on Aging, and wherever the term "Council on Aging" appears in any law the same shall mean the Department of Human Services.

SOURCES: Codes, 1942, § 8960-01; Laws, 1964, ch. 441, § 1; Laws, 1989, ch. 544, § 104, eff from and after July 1, 1989.

Cross References — General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

Department of Human Services, State Board of Human Services, and Executive Director of Department of Human Services, see § 43-1-2.

Old age assistance, see §§ 43-9-1 et seq.

RESEARCH REFERENCES

Practice References. Eric M. Carlson, Long-Term Care Advocacy (Matthew Bender).

Elder Law Library (CD-ROM) (Matthew Bender).

§§ 43-7-3 and 43-7-5. Repealed.

Repealed by Laws, 1989, ch. 544, § 106, eff from and after July 1, 1989.

§ 43-7-3. [Codes, 1942, § 8960-02; Laws, 1964, ch. 441, § 2; Laws, 1984, ch. 488, §§ 311, 312]

§ 43-7-5. [Codes, 1942, § 8960-03; Laws, 1964, ch. 441, § 3]

Editor's Note — Former § 43-7-3 specified the membership of the council on aging. Former § 43-7-5 specified the terms of members of the council.

§ 43-7-7. Duties of Department of Human Services.

The Department of Human Services shall be responsible for the collection of data and statistics and for making a continuing study of conditions affecting the general welfare of the aging population; for providing for an inter-agency and inter-departmental exchange of ideas; for encouraging and assisting in the development of programs for the aging in municipalities and counties of the state; for cooperation with public and private agencies and departments in coordinating programs for the aging; for encouraging and promoting biological, physiological and sociological research; for making recommendations for residential housing and needed nursing and custodial care facilities.

SOURCES: Codes, 1942, § 8960-04; Laws, 1964, ch. 441, § 4; Laws, 1989, ch. 544, § 105, eff from and after July 1, 1989.

Cross References — Provisions relating to the governor, see §§ 7-1-1 et seq.

Department of Human Services, State Board of Human Services, and Executive Director of Department of Human Services, see § 43-1-2.

Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

Regulation of Medicare supplement insurance, see §§ 83-9-101 et seq.

§§ 43-7-9 and 43-7-11. Repealed.

Repealed by Laws, 1989, ch. 544, § 106, eff from and after July 1, 1989.

§ 43-7-9. [Codes, 1942, § 8960-05; Laws, 1964, ch. 441, § 5]

§ 43-7-11. [Codes, 1942, § 8960-06; Laws, 1964, ch. 441, § 6; Laws, 1970, ch. 365, § 1; Laws, 1982, ch. 393, § 1]

Editor's Note — Former § 43-7-9 authorized the appointment of an executive director, and designated the council as the state agency to handle programs of federal government relating to the aging.

Former § 43-7-11 specified the compensation of members of the council.

LONG-TERM CARE FACILITIES OMBUDSMAN ACT

SEC.

43-7-51. Short title.
43-7-53. Office of State Long-term Care Facilities Ombudsman.
43-7-55. Definitions.
43-7-57. Duties of office.
43-7-59. Certification of community Long-term Care Facilities Ombudsman programs.
43-7-61. Community Long-term Care Facilities Ombudsmen training and certification program; community advisory committee; ombudsman identification card.
43-7-63. Duties of community ombudsman.
43-7-65. Investigations by ombudsman; referral of complaints to appropriate agencies.
43-7-67. Access to long-term care facilities by ombudsman.
43-7-69. Confidentiality of records; policies and procedures.

43-7-71. Investigation participants immune from liability; protected participants and practices.
43-7-73. Immunity from liability for ombudsman's acts causing injury.
43-7-75. Authority to establish additional committees.
43-7-77. Additional powers and duties of ombudsmen; agencies to cooperate.
43-7-78 and 43-7-79. Repealed

§ 43-7-51. Short title.

Sections 43-7-51 through 43-7-79 shall be known as the "Long-Term Care Facilities Ombudsman Act."

SOURCES: Laws, 1988, ch. 592, § 1, eff from and after July 1, 1988.

Editor's Note — Sections 43-7-78 and 43-7-79 referred to in this and following sections were repealed by their own terms on June 30, 1993.

RESEARCH REFERENCES

Practice References. Eric M. Carlson, Long-Term Care Advocacy (Matthew Bender).

§ 43-7-53. Office of State Long-term Care Facilities Ombudsman.

(1) There is hereby established within the Mississippi Council on Aging, the Office of the State Long-term Care Facilities Ombudsman as provided by the Older Americans Act of 1965, as amended, 42 U.S.C.S. 3001.

(2) The council shall establish the qualifications of state and community ombudsmen.

SOURCES: Laws, 1988, ch. 592, § 2, eff from and after July 1, 1988.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

Duties of the office created under this section, see § 43-7-57.

RESEARCH REFERENCES

Practice References. Eric M. Carlson, Long-Term Care Advocacy (Matthew Bender).

§ 43-7-55. Definitions.

For the purposes of Sections 43-7-51 through 43-7-79, the following words shall have the definitions ascribed herein:

(a) "Administrator" means any person charged with the general administration or supervision of a long-term care facility without regard to whether such person has an ownership interest in such facility or to whether such person's functions and duties are shared with one or more other persons;

(b) "Community ombudsman" means a person selected by an area agency on aging who is then trained and certified as such by the council pursuant to Section 43-7-59;

(c) "Council" means the Mississippi Council on Aging;

(d) "Long-term care facility" means any skilled nursing facility, extended care home, intermediate care facility, personal care home or boarding home which is subject to regulation or licensure by the State Department of Health;

(e) "Resident" means any resident, prospective resident, prior resident or deceased resident of any long-term care facility;

(f) "Sponsor" means an adult relative, friend or guardian who has a responsibility in the resident's welfare;

(g) "State Ombudsman" means the State Long-term Care Facilities Ombudsman;

(h) "Ombudsman" means the State Ombudsman or any community ombudsman;

(i) "Area agency on aging" means those grantees of the council which are charged with the local administration of the Older Americans Act.

SOURCES: Laws, 1988, ch. 592, § 3, eff from and after July 1, 1988.

Editor's Note — Sections 43-7-78 and 43-7-79, referred to in this section, were repealed by their own terms, on June 30, 1993.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

Long-term care facility as defined in this section as "care facility" for purposes of Vulnerable Persons Act, see § 43-47-5.

Required reporting of abuse or exploitation of patients and residents of long-term care facility, see § 43-47-37.

Federal Aspects — Older Americans Act of 1965, see generally 42 USCS § 3001 et seq.

§ 43-7-57. Duties of office.

The duties of the Office of the State Long-term Care Facilities Ombudsman, as created under Section 43-7-53, shall be:

(a) The establishment of a procedure to receive, investigate and resolve complaints filed by residents or sponsors or organizations or long-term care facilities on behalf of residents of long-term care facilities relating to the health, safety, welfare and rights of such residents;

(b) The monitoring of the development and implementation of federal, state and local laws, regulations and policies with respect to long-term care facilities;

(c) The establishment of a training program for both the state and community ombudsmen;

(d) To provide public forums, including the holding of public hearings, sponsorships of conferences and workshops, and the holding of other meetings to seek information concerning the needs and problems of residents in long-term care facilities;

(e) The establishment and maintenance of a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems faced by residents as a group;

(f) The submission of an annual report to the State Department of Health, which shall include statistical information about the state and community long-term care facilities ombudsman programs, shall identify systemic problems in long-term care facilities that cannot be adequately addressed by state and local agencies, and shall include recommendations for legislative or executive action to alleviate any systemic problems;

(g) The testing and certification of ombudsmen;

(h) The development of an ongoing program of publicizing programs designated by the Office of the State Long-term Care Facilities Ombudsman and by the community long-term care facilities ombudsman through contact with the media and civic organizations;

(i) The development of policies and regulations related to the use of volunteers in the program, and to assure that the responsibility and authority of volunteers shall be restricted to activities which do not involve access to patient or facility records; and

(j) Other duties as mandated by the Older Americans Act of 1965, as amended.

SOURCES: Laws, 1988, ch. 592, § 4, eff from and after July 1, 1988.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

Federal Aspects — Older Americans Act of 1965, see generally 42 USCS § 3001 et seq.

RESEARCH REFERENCES

Practice References. Eric M. Carlson, Long-Term Care Advocacy (Matthew Bender).

§ 43-7-59. Certification of community Long-term Care Facilities Ombudsman programs.

(1) The Office of the State Long-term Care Facilities Ombudsman shall certify community long-term care facilities ombudsman programs, except that community long-term care facilities ombudsman programs existing on July 1, 1988, shall be certified unless the Office of the State Long-term Care Facilities Ombudsman determines that the existing community program no longer meets the requirement of Sections 43-7-51 through 43-7-79.

(2) The council shall specify standards for the certification and operation of community ombudsman programs.

SOURCES: Laws, 1988, ch. 592, § 5, eff from and after July 1, 1988.

Editor's Note — Sections 43-7-78 and 43-7-79, referred to in this section, were repealed by their own terms, on June 30, 1993.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

Application of this section to the definition of "community ombudsman", see § 43-7-55.

§ 43-7-61. Community Long-term Care Facilities Ombudsmen training and certification program; community advisory committee; ombudsman identification card.

(1) The Office of the State Long-term Care Facilities Ombudsman shall establish a training and certification program. The council shall specify by rule the content of the training program. Each long-term care facilities ombudsman program shall bear the cost of training its own employees.

(2) The State Ombudsman shall arrange for the training of all prospective community ombudsmen selected by area agencies on aging. Such training shall include instruction in at least the following subjects as they relate to long-term care:

(a) The responsibilities and duties of community ombudsmen;

(b) The laws and regulations governing the receipt, investigation and resolution of issues of the well-being of a resident;

(c) The role of local, state and federal agencies that regulate long-term care facilities;

(d) The different kinds of long-term care facilities in Mississippi and the services provided in each kind;

(e) The special needs of the elderly and of the physically and mentally handicapped;

(f) The role of the family, the sponsor, the legal representative, the physician, the church, and other public and private agencies, and the community;

(g) How to work with long-term care facility staff;

(h) The aging process and characteristics of the long-term care facility resident or institutionalized elderly;

(i) Familiarity with and access to information concerning the laws and regulations governing Medicare, Medicaid, Social Security, Supplemental Security Income, the Veterans Administration and Workers' Compensation; and

(j) The training program shall include an appropriate internship to be performed in a long-term care facility.

(3) Persons selected by area agencies on aging who have satisfactorily completed the training arranged by the State Ombudsman shall be certified as community ombudsmen by the council.

(4) Each area agency on aging may appoint an advisory committee to advise it in the operation of its community ombudsman program. The number

and qualifications of members of the advisory committee shall be determined by the area agency on aging.

(5) Ombudsmen who have successfully completed the training and certification program under this section shall be given identification cards which shall be presented to employees of a long-term care facility upon request.

SOURCES: Laws, 1988, ch. 592, § 6, eff from and after July 1, 1988.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

§ 43-7-63. Duties of community ombudsman.

The duties of the community ombudsman shall be:

(a) The investigation of complaints filed by residents, sponsors, organizations or long-term care facilities on behalf of residents of long-term care facilities relating to the health, safety, welfare and rights of a resident.

(b) The pursuit of efforts to resolve complaints informally.

(c) The monitoring of the development and implementation of federal, state and local laws, regulations and policies relating to long-term care.

(d) The training of volunteers:

(i) Training of volunteers shall be approved by the State Long-term Care Facilities Ombudsman as appropriate to the level of responsibility of the volunteer, and shall be carried out in accordance with the training manual developed by the Office of the State Long-term Care Facilities Ombudsman;

(ii) Volunteers who have met the training and certification requirements appropriate to their level of responsibility shall be given identification cards which shall be presented to employees of a long-term care facility upon request;

(iii) No volunteer shall perform any of the duties enumerated by Sections 43-7-51 through 43-7-79 prior to completion of the training program, except as a supervised portion of that training program.

(e) The providing of public forums, scheduling of public hearings, sponsoring of conferences and workshops, and conducting other meetings to gather, disseminate and discuss information relative to the needs and problems of the residents in long-term care facilities.

(f) The encouragement and assistance in the development and operation of referral services which can provide current, valid and reliable information on long-term care facilities and alternatives to institutionalization for persons in need of these services.

(g) The submission of reports as required by the Office of the State Long-term Care Facilities Ombudsman.

(h) The development of an ongoing program of publicity concerning the purposes and mode of operation of the long-term care facilities ombudsman program through contact with the media and civic organizations.

SOURCES: Laws, 1988, ch. 592, § 7, eff from and after July 1, 1988.

Editor's Note — Sections 43-7-78 and 43-7-79, referred to in this section, were repealed by their own terms, on June 30, 1993.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

Additional powers and duties of community ombudsmen, see § 43-7-77.

§ 43-7-65. Investigations by ombudsman; referral of complaints to appropriate agencies.

(1) Investigative activities of the ombudsman shall include, but not be limited to: information gathering, mediation, negotiation, informing concerned parties of alternative remedies, reporting of suspected violations to appropriate licensing or certifying agencies and reporting of suspected criminal violations to the appropriate law enforcement authorities.

(2) The ombudsman need not investigate any complaint upon determining that:

(a) The complaint is trivial, frivolous, vexatious, delayed or made in bad faith;

(b) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(c) The matter complained of is not within the investigatory authority of the community long-term care facilities ombudsman program; or

(d) A real or apparent conflict of interest exists and no other ombudsman is available to investigate the complaint in an impartial manner.

(3) If a determination is made by a community long-term care facilities ombudsman not to investigate any complaint, then the complaint shall be referred to the Office of the State Long-term Care Facilities Ombudsman which shall make a final decision as to whether the matter warrants further investigation.

(4) The ombudsman shall have access to any long-term care facility for the purposes of an investigation under this section or for the purpose of carrying out other duties specified by Sections 43-7-51 through 43-7-79. The ombudsman may enter the facility at a time appropriate to the complaint. The visit may be announced in advance or such visit regarding the complaint under investigation may be unannounced. The clinical record of a resident may be examined by a representative of the State Ombudsman, with the permission of the resident or the resident's legal representative. Any copy of the clinical record examined under this provision shall not be removed from the nursing facility unless written authorization is obtained from the patient or the patient's legal representative.

(5)(a) The State Long-term Care Facilities Ombudsman shall develop referral procedures for all long-term care facilities programs to refer any complaint to any appropriate state or local government agency. The agency shall act as quickly as possible on any complaint referred to it by a Long-term care facilities ombudsman.

(b) If the complaint is referred to a government agency by a long-term care facilities ombudsman, that ombudsman shall be kept advised and shall be notified in writing in a timely manner by the government agency of the disposition of the referred complaint.

SOURCES: Laws, 1988, ch. 592, § 8; Laws, 1990, ch. 492, § 1, eff from and after October 1, 1990.

Editor's Note — Sections 43-7-78 and 43-7-79, referred to in this section, were repealed by their own terms, on June 30, 1993.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

Application of this section to an ombudsman's right of access to a long-term care facility, see § 43-7-67.

RESEARCH REFERENCES

Practice References. Eric M. Carlson, Long-Term Care Advocacy (Matthew Bender).

§ 43-7-67. Access to long-term care facilities by ombudsman.

Except during the course of an investigation carried out under Section 43-7-65, ombudsmen shall have access to long-term care facilities for the purposes of carrying out the duties enumerated by Sections 43-7-51 through 43-7-79 during reasonable hours or at other times with the prior approval of the administrator of the long-term care facility. Access shall mean:

(a) Access to the long-term care facility;
(b) Private communication with residents and their sponsors; and
(c) The right to tour the long-term care facility unescorted.

SOURCES: Laws, 1988, ch. 592, § 9, eff from and after July 1, 1988.

Editor's Note — Sections 43-7-78 and 43-7-79, referred to in this section, were repealed by their own terms, on June 30, 1993.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

§ 43-7-69. Confidentiality of records; policies and procedures.

Each long-term care facilities ombudsman program shall establish policies and procedures with regard to confidentiality of resident, long-term care facility and government agency records. These policies and procedures shall ensure that:

(a) Any ombudsman shall not disclose the identity of any resident or complainant unless the resident or complainant or the legal representative of either specifically consents in writing to the disclosure.

(b) The investigatory files of any long-term care facilities ombudsman program shall be maintained as confidential information, except as necessary for the preparation of statistical data, as required to carry out the duties of Sections 43-7-51 through 43-7-79, or as required pursuant to a court order.

SOURCES: Laws, 1988, ch. 592, § 10, eff from and after July 1, 1988.

Editor's Note — Sections 43-7-78 and 43-7-79, referred to in this section, were repealed by their own terms, on June 30, 1993.
Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

§ 43-7-71. Investigation participants immune from liability; protected participants and practices.

Individuals participating in an investigation carried out pursuant to Sections 43-7-51 through 43-7-79 shall be immune from any civil liability that otherwise might result by reason of their participation in the investigation as long as such participation is done in good faith. Protected participants and practices shall include:

(a) Any person who participates in the registering of a complaint under Sections 43-7-51 through 43-7-79;

(b) Any ombudsman who investigates a complaint filed pursuant to Sections 43-7-51 through 43-7-79;

(c) Any person who provides access to an ombudsman in the course of an investigation;

(d) Any person who provides evidence during the course of an investigation;

(e) Any person who participates in an administrative or judicial proceeding resulting from a complaint filed pursuant to Sections 43-7-51 through 43-7-79; and

(f) Any communications by an ombudsman if reasonably related to the requirements of that individual's responsibilities under Sections 43-7-51 through 43-7-79.

SOURCES: Laws, 1988, ch. 592, § 11, eff from and after July 1, 1988.

Editor's Note — Sections 43-7-78 and 43-7-79, referred to in this section, were repealed by their own terms, on June 30, 1993.
Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

§ 43-7-73. Immunity from liability for ombudsman's acts causing injury.

No long-term care facility covered by Sections 43-7-51 through 43-7-79, its owners, administrator, officers, directors, agents, consultants, employees or any member of management, shall be held civilly liable to any patient, family member of a patient or other third party for any act of omission or commission made by any ombudsman working or appointed with or without compensation including a volunteer ombudsman that causes any injury to a patient.

SOURCES: Laws, 1988, ch. 592, § 12, eff from and after July 1, 1988.

Editor's Note — Sections 43-7-78 and 43-7-79, referred to in this section, were repealed by their own terms, on June 30, 1993.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

RESEARCH REFERENCES

ALR. Valuing damages in personal injury actions awarded for gratuitously rendered nursing and medical care. 49 A.L.R.5th 685.

§ 43-7-75. Authority to establish additional committees.

The Office of the State Long-term Care Facilities Ombudsman may establish committees to assist in carrying out the programs and duties of such office.

SOURCES: Laws, 1988, ch. 592, § 13, eff from and after July 1, 1988.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

§ 43-7-77. Additional powers and duties of ombudsmen; agencies to cooperate.

(1) The ombudsman may request information, cooperation and assistance from any government agency, and the agency is hereby authorized and directed to provide cooperation, assistance or information that will enable the ombudsman to properly perform any of his functions, duties and powers under the provisions of Sections 43-7-51 through 43-7-79.

(2) All advocacy organizations and organizations similar in nature to the long-term care facilities ombudsman program which receive funding or official designation from the state shall cooperate with the long-term care facilities ombudsman.

(3) The Office of the State Long-term Care Facilities Ombudsman shall maintain a close working relationship with the legal assistance developer of the Mississippi Council on Aging.

(4) The long-term care facilities ombudsman shall seek to establish effective coordination between programs which provide legal services for the elderly, including, but not limited to, programs funded by the Federal Legal Services Corporation or the Older Americans Act of 1965, as amended.

(5) The long-term care facilities ombudsman may observe any survey in a long-term care facility conducted by a government agency.

SOURCES: Laws, 1988, ch. 592, § 14, eff from and after July 1, 1988.

Editor's Note — Sections 43-7-78 and 43-7-79, referred to in this section, were repealed by their own terms, on June 30, 1993.

Cross References — Transfer of functions of Council on Aging to the Department of Human Services, see § 43-7-1.

Additional powers and duties of community ombudsmen, see § 43-7-63.

Federal Aspects — The Federal Legal Services Corporation is codified at 42 USCS § 2996 et seq.

Older Americans Act of 1965, see generally 42 USCS § 3001 et seq.

RESEARCH REFERENCES

Practice References. Eric M. Carlson, Long-Term Care Advocacy (Matthew Bender).

§§ 43-7-78 and 43-7-79. Repealed.

Repealed by its own terms, on June 30, 1993.

§ 43-7-78. [Laws, 1992, ch. 465, § 1]

§ 43-7-79. [Laws, 1988, ch. 592, § 15; Laws, 1992, ch. 465, § 2]

Editor's Note — Former § 43-7-78 provided for a monthly fee payable by facilities to Ombudsman Programs Fund, and directed the allocations from the Fund.

Former § 43-7-79 made the Ombudsman program contingent upon receipt of federal funds.

CHAPTER 9

Old Age Assistance

Sec.
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§ 43-9-1. Statewide system of old age assistance.

For the purpose of providing for aged persons in need, a statewide system of old age assistance is hereby established and shall be in effect in all political subdivisions of this state to operate with due regard to the varying conditions and cost of living, to be financed by state appropriations therefor, and to be administered by the Department of Human Services, Division of Aging and Adult Services, as hereinafter provided.

SOURCES: Codes, 1942, § 7214; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 2008, ch. 541, § 4, eff from and after July 1, 2008.

Cross References — Social security and state retirement and disability benefits, see §§ 25-11-1 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Mandatory state supplemental payments to aged or blind persons and persons with disabilities, see §§ 43-1-31 through 43-1-37.

Council on aging, see §§ 43-7-1 et seq.

Institutions for the aged and infirm, see §§ 43-11-1 et seq.

Medical assistance for the aged, see §§ 43-13-1 et seq.

Medicaid, see §§ 43-13-101 et seq.

Assistance to persons with disabilities, see §§ 43-29-1 et seq.

Poor persons, see §§ 43-31-1 et seq.

Unemployment compensation, see §§ 71-5-1 et seq.
Subpoenas and old age assistance investigations, see Miss. R. Civ. P. 45.
Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

RESEARCH REFERENCES

ALR. Alcoholic as entitled to public assistance under poor laws. 43 A.L.R.3d 554.

Am Jur. 70A Am. Jur. 2d, Social Security and Medicare §§ 1 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 187 et seq.

Practice References. Eric M. Carlson, Long-Term Care Advocacy (Matthew Bender).

Elder Law Library (CD-ROM) (Matthew Bender).

§ 43-9-3. Short title.

This chapter and Chapter 1 of this title shall be known as the "Mississippi Old Age Security Law" and shall be cited as such.

SOURCES: Codes, 1942, § 7215; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

§ 43-9-5. Definitions.

When used herein, the term "department" means the State Department of Public Welfare; "commissioner" means the state commissioner of public welfare; "board" means the state board of public welfare; "applicant" means a person applying for assistance under this chapter; "recipient" means a person receiving aid under the provisions of this chapter; "assistance" means money payments including vendor payments made to or in behalf of needy aged persons hereunder; "county department" means the county board of public welfare, the director of public welfare, and such other personnel as may be authorized in said department by the State Department of Public Welfare.

SOURCES: Codes, 1942, § 7216; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1962, ch. 562, § 1; Laws, 1970, ch. 503, § 1, eff from and after passage (approved March 6, 1970).

Cross References — State Department of Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-9-7. Eligibility for assistance to the needy aged.

Assistance shall be given under this chapter to any person who:

(a) Has attained the age of sixty-five (65) years;

(b) Has resided in the state for one (1) year immediately preceding his application and such residence shall not have been established solely or in part for the purpose of enabling the applicant to come within the provisions of this chapter;

(c) Resides in the county in which application is made;

(d) Has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;

(e) Is not an inmate of or being maintained by any county, municipal, state, or national institution at the time of receiving assistance except as a patient in a public medical institution, or is not a patient in any institution for tuberculosis or mental diseases, or is not a patient in any medical institution as a result of having been diagnosed as having tuberculosis or psychosis; in the event the federal Social Security Act or other appropriate federal statutes are so amended as to permit funds appropriated by congress to be used for assistance to aged persons who are inmates of public institutions, then being an inmate of any such institution shall not disqualify any such person for assistance. An inmate of a public institution may, however, make application for such assistance but the assistance if granted shall not begin until after he ceases to be an inmate;

(f) Has not made an assignment or transfer of property so as to render himself eligible for assistance under this chapter at any time within two (2) years immediately prior to the filing of an application for assistance pursuant to the provisions hereof.

SOURCES: Codes, 1942, § 7225; Laws, 1936, ch. 175; Laws, 1938, ch. 361; Laws, 1940, ch. 289; Laws, 1940, 298; Laws, 1948, ch. 408, § 1; Laws, 1960, ch. 439, § 1.

Cross References — Disclosure of records of public assistance disbursements and payments, see § 43-1-19.

Aid for needy persons with disabilities, see § 43-29-3.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

JUDICIAL DECISIONS

1. In general.

State statutes that deny welfare benefits to resident aliens or to aliens who have not resided in the United States for a specified number of years violated the equal protection clause of the Fourteenth Amendment and conflict with overriding national policies including the right of an alien lawfully within the country to enter and abide in any state on an equality of legal privileges with all citizens under nondiscriminatory laws in areas which have been constitutionally entrusted to the federal government. Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

RESEARCH REFERENCES

ALR. Reimbursement of public for financial assistance to aged persons. 29 A.L.R.2d 731.

Requisite residence for purposes of old age assistance. 43 A.L.R.2d 1427.

Validity, construction, and application of state statutes limiting or barring public health care to indigent aliens. 113 A.L.R.5th 95.

CJS. 81 C.J.S., Social Security and Public Welfare § 188.

§ 43-9-9. Amount of assistance.

The amount of assistance for the needy aged which any recipient shall receive shall be determined by the county department with due regard to the resources, income, and necessary expenditures of the individual and the conditions existing in each case and in accordance with the rules and regulations made by the state department, and shall be sufficient when added to all other income and support of the recipient to provide him with a reasonable subsistence compatible with decency and health or special needs as permitted under the federal Social Security Act. However, the state department of public welfare may disregard the amount of monthly income of the recipient as specified by the federal Social Security Act.

SOURCES: Codes, 1942, § 7226; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1957, Ex Sess ch. 23; Laws, 1960, ch. 440; Laws, 1962, ch. 562, § 2; Laws, 1962, 2d Ex Sess ch. 33; Laws, 1968, ch. 562, § 5, eff from and after passage (approved July 30, 1968).

Cross References — State Department of Welfare as meaning Department of Human Services, see § 43-1-1.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

§ 43-9-11. Application for assistance to the needy aged.

Application for assistance under this chapter shall be made to the county welfare agent of the county in which the applicant resides. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state department. Such application shall contain such information as may be prescribed by the state department.

SOURCES: Codes, 1942, § 7227; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

Cross References — State Department of Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-9-13. Investigation of applications.

Whenever a county welfare agent receives an application for assistance under this chapter, an investigation and record shall promptly be made of the circumstances of the applicant to ascertain the facts supporting the application made under this chapter and such other information as may be required by the rules of the state board.

The county department and the state department shall have the power to conduct examinations, subpoena witnesses, require the attendance of witnesses, and the production of books, records and papers, and make application to the circuit court of the county to compel the attendance of witnesses and the production of such books, records and papers. The county board and such officers and employees as are designated by the state commissioner may also administer oaths and affirmations.

SOURCES: Codes, 1942, § 7228; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

Cross References — State Department of Welfare as meaning Department of Human Services, see § 43-1-1.

Subpoenas and old age assistance investigations, see Miss. R. Civ. P. 45.

§ 43-9-15. Granting of assistance.

Upon completion of the investigation, the county department shall determine in accordance with the rules and regulations of the state department, whether the applicant is eligible for assistance under the provisions of this chapter, the amount of assistance he shall receive, and the date upon which such assistance shall begin. All checks for such assistance shall be mailed by the state department or county welfare office to the recipients at their postoffice address. The director of the state department shall determine whether such checks shall be mailed by the state department or by the county welfare office.

It shall be the duty of the state department insofar as is practicable to provide assistance to eligible persons, who, due to limitations of available funds have not been placed upon the assistance rolls, as soon as practicable after additional funds become available to the department and prior to making a general increase in assistance grants to persons already on said assistance rolls. However, nothing in this section shall be construed to bar or limit any county department of public welfare from granting individual increases in the amount of assistance to recipients based upon their individual needs. The state department shall, as soon as made possible by the availability of additional funds, take steps to eliminate all waiting lists. The state department or the office of public welfare of the various counties shall notify each applicant concerning the action taken on his or her application for assistance, and if the application for assistance is denied, the applicant shall be notified and given the reasons for such denial, and the lack of money shall not constitute a reason for such denial.

SOURCES: Codes, 1942, § 7229; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1944, ch. 291, § 1, eff June 30, 1944.

Cross References — State Department of Welfare as meaning Department of Human Services, see § 43-1-1.

Disclosure of records of public assistance disbursements and payments, see § 43-1-19.

RESEARCH REFERENCES

ALR. Reimbursement of public for financial assistance to aged persons. 29 A.L.R.2d 731.

§ 43-9-17. Payment for benefit of recipient.

If the recipient or applicant is found incapable of taking care of himself or his money, payments may be paid to any person, firm, corporation, association, institution or agency designated to receive it by order of the county department of his county.

SOURCES: Codes, 1942, § 7230; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1962, ch. 562, § 3, eff from and after passage (approved April 25, 1962).

Cross References — Disclosure of records of disbursements and payments of public assistance, see § 43-1-19.

§ 43-9-19. Assistance not assignable.

No assistance given under this chapter shall be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

SOURCES: Codes, 1942, § 7231; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

§ 43-9-21. Appeal to the State Department of Public Welfare.

The county department shall at once report to the state department its decision upon each application. If an application is not acted upon by the county department within thirty (30) days after the filing of the application, or is denied or revoked, the applicant may appeal to the state department in the manner and form prescribed by rules and regulations. The state department shall upon receipt of such an appeal give the applicant an opportunity for a fair hearing. The state department may also, upon its own motion, review any decision of a county department and may consider any application upon which a decision has not been made by the county department within a reasonable time.

The state department may make such additional investigation as it may deem necessary and shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this chapter. All decisions of the state department shall be binding upon the county department involved and shall be complied with by such county department.

SOURCES: Codes, 1942, § 7232; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

Cross References — State Department of Welfare as meaning Department of Human Services, see § 43-1-1.

Appeal in case of aid to the blind, see § 43-3-73.

Appeal in case of aid to persons with disabilities, see § 43-29-17.

§ 43-9-23. Periodic reconsideration and changes in amount of assistance.

All assistance grants made under this chapter shall be reconsidered as frequently as may be required by the rules and regulations of the state board. After such further investigation, the amount of assistance may be changed or assistance may be entirely withdrawn if the state commissioner or county department finds that the recipient's circumstances have altered sufficiently to warrant such action. The county department may at any time cancel and revoke assistance for cause and it may for cause suspend assistance for such period as it may deem proper. Whenever assistance is thus withdrawn, revoked, suspended or in any way changed, the county department shall at once report to the state department such decision together with the record of its investigation. All such decisions shall be subject to review by the state commissioner as provided in Section 43-9-21.

SOURCES: Codes, 1942, § 7233; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

§ 43-9-25. No fees to be paid.

No person shall make any charge or receive any fee for representing any applicant or recipient of assistance in any proceeding hereunder except as to criminal proceedings brought pursuant to Section 43-9-27; or with respect to any application whether such fee or charge be paid by the applicant or recipient or by any other person or persons. Any violation of this section shall constitute a misdemeanor and be punishable as provided in Section 43-9-27.

SOURCES: Codes, 1942, § 7235; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 43-9-27. Fraudulent acts.

Whoever obtains, or attempts, or aids, or abets any person to obtain by means of a wilfully false statement or representation or by impersonation, or other fraudulent device;

(1) Assistance to which he is not entitled; or

(2) Assistance greater than that to which he is justly entitled, is guilty of a misdemeanor, and upon the conviction thereof shall be fined not more than five hundred dollars ($500.00) or be imprisoned for not more than three (3) months, or be both so fined and imprisoned in the discretion of the court. In assessing the penalty, the court shall take into consideration the amount of money fraudulently received.

SOURCES: Codes, 1942, § 7236; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Subpoenas and old age assistance investigations, see Miss. R. Civ. P. 45.

§ 43-9-29. Recovery from recipient's estate for false representation.

On the death of any recipient, double the total amount of assistance paid to such recipient under this chapter shall be allowed as a claim against the estate of such person if it is found that such recipient has obtained funds by false representation.

SOURCES: Codes, 1942, § 7234; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

Cross References — Recovery against relatives for support of poor persons, see § 43-31-25.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare § 202.

§ 43-9-31. Limitations of chapter.

All assistance granted under this chapter shall be deemed to be granted and to be held subject to the provisions of any amending or repealing law that may hereafter be passed. No recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing law.

SOURCES: Codes, 1942, § 7237; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

§ 43-9-33. Receipt and disposition of federal and other funds.

The state treasurer is hereby authorized and directed to receive on behalf of the state, and to execute all instruments incidental thereto, federal or other funds to be used for payments of assistance herein provided, and to place all such funds in a special account to the credit of the "state department of public welfare," which said funds shall be expended by the department for the purposes and under the provisions of this chapter, and shall be paid out by the state treasurer as funds appropriated to carry out the provisions of this chapter are paid out by him.

SOURCES: Codes, 1942, § 7239; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

Cross References — State Department of Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-9-35. Disbursement of funds; how made.

The state department shall issue all checks for assistance to person qualifying for aid under the provisions of this chapter. All such checks shall be drawn upon funds made available to the state department of public welfare by the state auditor, upon requisition of the commissioner, approved by the state board.

SOURCES: Codes, 1942, § 7240; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1979, ch. 468, § 3, eff from and after July 1, 1979.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — State Department of Welfare as meaning Department of Human Services, see § 43-1-1.

Disclosure of records of disbursements and payments of public assistance, see § 43-1-19.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare § 189.

§ 43-9-37. Limitation of assistance and administrative cost.

The total amount of assistance granted under the provisions of this chapter and the expenses incurred thereunder shall not exceed the amounts of funds appropriated therefor by the legislature, together with any funds received from the federal government or other sources for the purposes of this chapter and Chapter 1 of this title. The cost of administering this chapter and Chapter 1 of this title shall not exceed the funds appropriated by the state legislature.

SOURCES: Codes, 1942, § 7241; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1966, ch. 607, § 1; Laws, 1973, ch. 487, § 1, eff from and after passage (approved April 12, 1973).

§ 43-9-39. Litigation.

No suit shall be maintained in any court for the purpose of compelling an award of assistance or to enforce payment of any award of assistance made under the provisions of this chapter. Awards made hereunder shall in no case create any vested or other rights for assistance in the recipients.

SOURCES: Codes, 1942, § 7243; Laws, 1936, ch. 175; Laws, 1940, ch. 298.

§ 43-9-41. Construction of law.

This chapter and Chapter 1 of this title are supplementary to and in aid of any and all welfare laws now in force in Mississippi which are not directly in conflict herewith.

SOURCES: Codes, 1942, § 7244; Laws, 1940, ch. 298.

§ 43-9-43. Reservation of right to amend or repeal old age security law.

The Legislature reserves the right to amend or repeal all or any part of the Mississippi Old Age Security Law at any time, and there shall be no vested private right of any kind against such amendment or repeal. All the rights, benefits, or immunities conferred by said law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal said law at any time.

SOURCES: Codes, 1942, § 7246; Laws, 1940, ch. 298.

Editor's Note — Pursuant to § 43-9-3, this chapter and Chapter 1 of this title are known collectively as the Mississippi Old Age Security Law.

§ 43-9-45. Termination of federal assistance program as ipso facto repeal.

The Mississippi Old Age Security Law is continued in force in pursuance of Public Law 92-603, 92nd Congress, under Title III thereof establishing supplemental security income for the aged, blind and disabled; and under Title VI thereof providing grants to the several states for services to the aged, blind or disabled to help needy individuals who are sixty-five (65) years of age or over, are blind, or are disabled to attain or retain capability for self-support or self-care under plans approved by the secretary of health, education and welfare, for services to the aged, blind or disabled; to continue the administration of aid to families with dependent children, pursuant to Title IV, federal Social Security Act, and Sections 43-17-1 through 43-17-25; to determine the eligibility of needy persons for food stamps from the U. S. Department of Agriculture or other federal agency, thus enabling the state to make more adequate provisions for needy aged, blind or disabled persons and for families with dependent children by reason of said federal grants therein provided, the state being unable financially to provide such services and assistance without such federal aid. Therefore, in the event that Public Law 92-603, 92nd Congress, or Title IV, federal Social Security Act, should be finally adjudged invalid, or in the event that the federal grants-in-aid provided thereunder should be substantially reduced below fifty percent (50%), then and in either of such events, and upon public proclamation of the governor, the Mississippi Old Age Security Law shall ipso facto be thereby repealed and rendered null and void.

SOURCES: Codes, 1942, § 7247; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1973, ch. 489, § 1; Laws, 1980, ch. 508, § 3; Laws, 1981, ch. 350, § 2, eff from and after July 1, 1981.

Cross References — Pursuant to § 43-9-3, this chapter and Chapter 1 of this title are known collectively as the Mississippi Old Age Security Law.

Social security and state retirement and disability benefits, see §§ 25-11-1 et seq.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

Title IV, Social Security Act, see 42 USCS §§ 601 et seq.

§ 43-9-47. Authority of municipality or county to match federal funds.

(1) The governing authority of any municipality or county of the State of Mississippi is hereby authorized and empowered, in its discretion, to expend such sums as it deems necessary and desirable to match federal funds for any assistance program for aged persons in the State of Mississippi. The governing authority of any municipality or county is authorized to make a voluntary contribution to any such assistance program for aged persons.

(2) The sums expended under this section may be paid from any available funds of the municipality or county to any agency, project, grantee or program approved or sponsored by the Mississippi Council on Aging.

SOURCES: Laws, 1979, ch. 370, eff from and after passage (approved March 15, 1979).

Cross References — Transfer of functions of Mississippi Council on Aging to the Department of Human Services, see § 43-7-1.

ATTORNEY GENERAL OPINIONS

County may expend funds to provide office space and utilities to Central Mississippi, Inc. if funds are necessary and desirable to match federal funds for assistance program for aged persons or if funds are voluntary contribution for assistance program for aged persons of Central Mississippi, Inc.; county may provide office space and utilities which are necessary for administration of assistance program for aged persons if expenditure meets criteria of statute. Shaw, March 29, 1990, A.G. Op. #90-0167.

A county may contribute funds to a nonprofit agency that assists aged persons in that and other counties if the agency in question is one approved or sponsored by the Mississippi Council on Aging. Shaw, March 5, 1999, A.G. Op. #99-0099.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December 1979.

CHAPTER 11

Institutions for the Aged or Infirm

In General 43-11-1
Choice of Pharmacy Providers in Long-term Care Facilities 43-11-41

IN GENERAL

Sec.
43-11-1. Definitions.
43-11-3. Purpose.
43-11-5. License.
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43-11-8. Application for license for adult foster care facility; license fees; license renewal.
43-11-9. Issuance and renewal of license for institution for aged or infirm or personal care home; user fee.
43-11-11. Denial or revocation of license; hearings and review.
43-11-13. Rules, regulations and standards; compliance and inspection with respect to fire prevention measures; scheduled drugs in personal care homes; resident may consent in writing to continue residing in personal care home regardless of determination by licensing agency that skilled nursing services appropriate; regulations regarding patient's personal deposit accounts and use of patient food and medicine records; criminal record checks for new employees at institutions or facilities; affidavit concerning criminal offenses required of current employees; penalty for perjury; civil immunity for health care facilities regarding employment decisions; rules, regulations and standards regarding operation of adult foster care facilities [Subsection (4) repealed effective July 1, 2017].
43-11-15. Effective date of regulations.
43-11-16. Medical records not public documents but property of institutions for aged and infirm.
43-11-17. Inspections.
43-11-19. Information confidential.
43-11-21. Annual report of licensing agency.
43-11-23. Judicial review.
43-11-25. Penalties.
43-11-27. Injunction.

§ 43-11-1. Definitions.

When used in this chapter, the following words shall have the following meaning:

(a) "Institutions for the aged or infirm" means a place either governmental or private that provides group living arrangements for four (4) or more persons who are unrelated to the operator and who are being provided food, shelter and personal care, whether any such place is organized or operated for profit or not. The term "institution for aged or infirm" includes nursing homes, pediatric skilled nursing facilities, psychiatric residential treatment facilities, convalescent homes, homes for the aged and adult foster care facilities, provided that these institutions fall within the scope of the definitions set forth above. The term "institution for the aged or infirm" does not include hospitals, clinics or mental institutions devoted primarily to providing medical service, and does not include any private residence in which the owner of the residence is providing personal care services to disabled or homeless veterans under an agreement with, and in compliance with the standards prescribed by, the United States Department of Veterans Affairs, if the owner of the residence also provided personal care services to disabled or homeless veterans at any time during calendar year 2008.

(b) "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, or any licensee herein or the legal successor thereof.

(c) "Personal care" means assistance rendered by personnel of the home to aged or infirm residents in performing one or more of the activities of daily living, which includes, but is not limited to, the bathing, walking, excretory functions, feeding, personal grooming and dressing of such residents.

(d) "Psychiatric residential treatment facility" means any nonhospital establishment with permanent facilities which provides a twenty-four-hour program of care by qualified therapists, including, but not limited to, duly licensed mental health professionals, psychiatrists, psychologists, psychotherapists and licensed certified social workers, for emotionally disturbed children and adolescents referred to such facility by a court, local school district or by the Department of Human Services, who are not in an acute phase of illness requiring the services of a psychiatric hospital, and are in need of such restorative treatment services. For purposes of this paragraph, the term "emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

1. An inability to learn which cannot be explained by intellectual, sensory or health factors;
2. An inability to build or maintain satisfactory relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems. An establishment furnishing primarily domiciliary care is not within this definition.

(e) "Pediatric skilled nursing facility" means an institution or a distinct part of an institution that is primarily engaged in providing to inpatients skilled nursing care and related services for persons under twenty-one (21) years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(f) "Licensing agency" means the State Department of Health.

(g) "Medical records" mean, without restriction, those medical histories, records, reports, summaries, diagnoses and prognoses, records of treatment and medication ordered and given, notes, entries, x-rays and other written or graphic data prepared, kept, made or maintained in institutions for the aged or infirm that pertain to residency in, or services rendered to residents of, an institution for the aged or infirm.

(h) "Adult foster care facility" means a home setting for vulnerable adults in the community who are unable to live independently due to physical, emotional, developmental or mental impairments, or in need of emergency and continuing protective social services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult. Adult foster care programs shall be designed to meet the needs of vulnerable adults with impairments through individual plans of care, which provide a variety of health, social and related support services in a protective setting, enabling participants to live in the community. Adult foster care programs may be (i) traditional, where the foster care provider lives in the residence and is the primary caregiver to clients in the home; (ii) corporate, where the foster care home is operated by a corporation with shift staff delivering services to clients; or (iii) shelter, where the foster care home accepts clients on an emergency short-term basis for up to thirty (30) days.

SOURCES: Codes, 1942, § 6964-01; Laws, 1952, ch. 384, § 1; Laws, 1964, ch. 429, § 1; Laws, 1979, ch. 451, § 25; Laws, 1986, ch. 437, § 29; Laws, 1990, ch. 510, § 3; Laws, 1993, ch. 609, § 11; Laws, 2002, 3rd Ex Sess, ch. 2, § 9; Laws, 2007, ch. 552, § 1; Laws, 2009, ch. 478, § 1; Laws, 2011, ch. 438, § 1, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (h)(ii). In both versions of the section, (h)(ii) was corrected by substituting "shift staff delivering services" for "shift staff delivery services." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — In (h), there are references to "vulnerable adults." The "Vulnerable Adult Act" was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357 to change references to "vulnerable adult" to "vulnerable person."

Cross References — State board of health, see §§ 41-3-1.1 et seq.

Mississippi Health Care Certificate of Need Law of 1979, see §§ 41-7-171 et seq.

Institutions licensed under this chapter excluded from definition of "hotel", see § 41-49-3.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq. to the amended act.

Old age assistance, generally, see §§ 43-9-1 et seq.

Medical assistance to the aged, see §§ 43-13-1 et seq.

Medicaid, see §§ 43-13-101 et seq.

Vulnerable persons generally, see §§ 43-47-1 et seq.

Institutions for aged or infirm as defined in this section as "care facility" for purposes of Vulnerable Persons Act, see § 43-47-5.

Required reporting of abuse or exploitation of patients and residents of institutions for aged or infirm, see § 43-47-37.

Nursing home administrators, see §§ 73-17-1 et seq.

ATTORNEY GENERAL OPINIONS

The definition of "care facility" in Section 43-47-5 applies for abuse, neglect, and exploitation reporting and investigating purposes regardless of whether a facility that is required to be licensed is so licensed. Brittain, May 2, 2003, A.G. Op. 03-0702.

RESEARCH REFERENCES

Am Jur. 13A Am. Jur. Pl & Pr Forms (Rev), Hospitals, Forms 171 et seq. (Complaint, petition, or declaration — injuries sustained by patient on negligently maintained floor — against nursing homes, rest homes).

Practice References. Eric M. Carlson, Long-Term Care Advocacy (Matthew Bender).

Elder Law Library (CD-ROM) (Matthew Bender).

JUDICIAL DECISIONS

1. Liability.
2. Causal link.

1. Liability.

Neither Miss. Code Ann. § 43-11-1 et seq., nor Miss. Code Ann. § 73-17-1 et seq., expressly created a duty by a licensee or an administrator to residents of a nursing home; nor did the Supreme Court of Mississippi hold that a breach of either licensing statute supported a negligence action filed by a third party. Howard v. Estate of Harper, 947 So. 2d 854 (Miss. 2006).

2. Causal link.

Grant of summary judgment in favor of a nursing center's president and its former administrator in the decedent's representative's action for personal injuries and wrongful death was appropriate under Miss. Code Ann. § 43-11-1 because the evidence failed to show a causal link between the president and the administrator and the decedent; under Miss. Code Ann. § 43-11-1 et seq., no language was included that created a specific legal duty for either a licensee or an administrator. Estate of Hazelton v. Cain, 950 So. 2d 231 (Miss. Ct. App. 2007).

§ 43-11-3. Purpose.

The purpose of this chapter is to protect and promote the public welfare by providing for the development, establishment and enforcement of certain standards in the maintenance and operation of institutions for the aged or infirm which will insure safe, sanitary and reasonably adequate care of individuals in such institutions.

SOURCES: Codes, 1942, § 6964-02; Laws, 1952, ch. 384, § 2, eff from and after passage (approved April 11, 1952).

§ 43-11-5. License.

No person, acting severally or jointly with any other person, shall establish, conduct, or maintain an institution for the aged or infirm in this state without a license under this chapter.

SOURCES: Codes, 1942, § 6964-03; Laws, 1952, ch. 384, § 3, eff from and after passage (approved April 11, 1952).

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Licensing of nursing home administrators, see § 73-17-11.

RESEARCH REFERENCES

ALR. Licensing and regulation of nursing or rest homes. 53 A.L.R.4th 689.

JUDICIAL DECISIONS

1. In general.

Additional determinations needed to be made as to the licensure status pursuant to Miss. Code Ann. § 43-11-5 of a nursing home facility in a patient's negligency suit; the notice provision of Miss. Code Ann. § 15-1-36(15) did not apply to non-licensed facilities. Saul v. Jenkins, 963 So. 2d 552 (Miss. 2007).

Notice requirements of Miss. Code Ann. § 15-1-36 apply only to licensed facilities. Saul v. Jenkins, 963 So. 2d 552 (Miss. 2007).

§ 43-11-7. Application for license for institution for aged or infirm or personal care home; license fees.

Any person, as defined in Section 43-11-1, may apply for a license as provided in this section. An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed under this chapter. Each application for a license for an institution for the aged or infirm, except for personal care homes, shall be accompanied by a license fee of Twenty Dollars ($20.00) for each bed in the institution, with a minimum fee per institution of Two Hundred Dollars ($200.00), which shall be paid to the licensing agency. Each application for a license for a personal care home shall be accompanied by a license fee of Fifteen Dollars ($15.00) for each bed in the institution, with a minimum fee per institution of One Hundred Dollars ($100.00), which shall be paid to the licensing agency.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

SOURCES: Codes, 1942, § 6964-04; Laws, 1952, ch. 384, § 4; Laws, 1979, ch. 445, § 6; Laws, 1986, ch. 500, § 30; Laws, 1998, ch. 433, § 8; Laws, 2002, ch. 578, § 2, eff from and after July 1, 2002.

Cross References — Application for license for adult foster care facility, see § 43-11-8.

§ 43-11-8. Application for license for adult foster care facility; license fees; license renewal.

(1) An application for a license for an adult foster care facility shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder. Each application for a license for an adult foster care facility shall be accompanied by a license fee of Ten Dollars ($10.00) for each person or bed of licensed capacity, with a minimum fee per home or institution of Fifty Dollars ($50.00), which shall be paid to the licensing agency.

(2) A license, unless suspended or revoked, shall be renewable annually upon payment by the licensee of an adult foster care facility, except for personal care homes, of a renewal fee of Ten Dollars ($10.00) for each person or bed of licensed capacity in the institution, with a minimum renewal fee per institution of Fifty Dollars ($50.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulation. Each license shall be issued only for the premises and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

SOURCES: Laws, 2007, ch. 552, § 3, eff from and after July 1, 2007.

Cross References — Application for license for institution for aged or infirm or personal care home, see § 43-11-7.

§ 43-11-9. Issuance and renewal of license for institution for aged or infirm or personal care home; user fee.

(1) Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and the institutional facilities meet the requirements established under this chapter and the requirements of Section 41-7-173 et seq., where determined by the licensing agency to be applicable. A license, unless suspended or revoked, shall be renewable annually upon payment by (a) the licensee of an institution for the aged or infirm, except for personal care homes, of a renewal fee of Twenty Dollars ($20.00) for each bed in the institution, with a minimum fee per institution of Two Hundred Dollars ($200.00), or (b) the licensee of a personal care home of a renewal fee of Fifteen Dollars ($15.00) for each bed in the institution, with a minimum fee per institution of One Hundred Dollars ($100.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulation. Each license shall be issued only for the

premises and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

(2) A fee known as a "User Fee" shall be applicable and shall be paid to the licensing agency as set out in subsection (1) hereof. This user fee shall be assessed for the purpose of the required reviewing and inspections of the proposal of any institution in which there are additions, renovations, modernizations, expansion, alterations, conversions, modifications or replacement of the entire facility involved in such proposal. This fee includes the reviewing of architectural plans in all steps required. There shall be a minimum user fee of Fifty Dollars ($50.00) and a maximum user fee of Five Thousand Dollars ($5,000.00).

(3) No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

SOURCES: Codes, 1942, § 6964-05; Laws, 1952, ch. 384, § 5; Laws, 1979, ch. 445, § 7; Laws, 1980, ch. 493, § 19; Laws, 1986, ch. 437, § 30; Laws, 1986, ch. 500, § 31; Laws, 1998, ch. 433, § 9, eff from and after July 1, 1998.

Cross References — Renewal of license for adult foster care facility, see § 43-11-8.

RESEARCH REFERENCES

ALR. Licensing and regulation of nursing or rest homes. 53 A.L.R.4th 689.

§ 43-11-11. Denial or revocation of license; hearings and review.

The licensing agency after notice and opportunity for a hearing to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter.

Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or such service, at which time the applicant or licensee, shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty (30) day period, appeals the decision to the chancery court pursuant to Section 43-11-23.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the licensing agency. A full and complete record shall be kept of all proceedings, and all testimony shall be recorded but need not be transcribed unless the decision is appealed pursuant to section 43-11-23. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency provided any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

SOURCES: Codes, 1942, § 6964-06; Laws, 1952, ch. 384, § 6, eff from and after passage (approved April 11, 1952).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the second paragraph, by substituting "appeals the decision of the chancery court pursuant to Section 43-11-23" for "appeals to the decision of the chancery court; pursuant to Section 43-11-23" at the end. The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Application of this section to notice of denial, suspension or revocation of license to operate ambulatory surgical facility, see § 41-75-23.

Applicability of this section to notice of decisions with respect to the licensing of birthing centers, see § 41-77-21.

Appeal of decision after notice of decision as provided under this section see § 43-11-23.

§ 43-11-13. Rules, regulations and standards; compliance and inspection with respect to fire prevention measures; scheduled drugs in personal care homes; resident may consent in writing to continue residing in personal care home regardless of determination by licensing agency that skilled nursing services appropriate; regulations regarding patient's personal deposit accounts and use of patient food and medicine records; criminal record checks for new employees at institutions or facilities; affidavit concerning criminal offenses required of current employees; penalty for perjury; civil immunity for health care facilities regarding employment decisions; rules, regulations and standards regarding operation of adult foster care facilities [Subsection (4) repealed effective July 1, 2017].

(1) The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards, including classifications, with respect to all institutions for the aged or infirm to be licensed under this chapter as may be designed to further the accomplishment of the purpose of this chapter in promoting adequate care of individuals in those institutions in the interest of public health, safety and welfare. Those rules, regulations and standards shall be adopted and promulgated by the licensing agency and shall be recorded and

indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Rules, Regulations and Minimum Standards for Institutions for the Aged or Infirm" and the book shall be open and available to all institutions for the aged or infirm and the public generally at all reasonable times. Upon the adoption of those rules, regulations and standards, the licensing agency shall mail copies thereof to all those institutions in the state that have filed with the agency their names and addresses for this purpose, but the failure to mail the same or the failure of the institutions to receive the same shall in no way affect the validity thereof. The rules, regulations and standards may be amended by the licensing agency, from time to time, as necessary to promote the health, safety and welfare of persons living in those institutions.

(2) The licensee shall keep posted in a conspicuous place on the licensed premises all current rules, regulations and minimum standards applicable to fire protection measures as adopted by the licensing agency. The licensee shall furnish to the licensing agency at least once each six (6) months a certificate of approval and inspection by state or local fire authorities. Failure to comply with state laws and/or municipal ordinances and current rules, regulations and minimum standards as adopted by the licensing agency, relative to fire prevention measures, shall be prima facie evidence for revocation of license.

(3) The State Board of Health shall promulgate rules and regulations restricting the storage, quantity and classes of drugs allowed in personal care homes and adult foster care facilities. Residents requiring administration of Schedule II Narcotics as defined in the Uniform Controlled Substances Law may be admitted to a personal care home. Schedule drugs may only be allowed in a personal care home if they are administered or stored utilizing proper procedures under the direct supervision of a licensed physician or nurse.

(4)(a) Notwithstanding any determination by the licensing agency that skilled nursing services would be appropriate for a resident of a personal care home, that resident, the resident's guardian or the legally recognized responsible party for the resident may consent in writing for the resident to continue to reside in the personal care home, if approved in writing by a licensed physician. However, no personal care home shall allow more than two (2) residents, or ten percent (10%) of the total number of residents in the facility, whichever is greater, to remain in the personal care home under the provisions of this subsection (4). This consent shall be deemed to be appropriately informed consent as described in the regulations promulgated by the licensing agency. After that written consent has been obtained, the resident shall have the right to continue to reside in the personal care home for as long as the resident meets the other conditions for residing in the personal care home. A copy of the written consent and the physician's approval shall be forwarded by the personal care home to the licensing agency.

(b) The State Board of Health shall promulgate rules and regulations restricting the handling of a resident's personal deposits by the director of a personal care home. Any funds given or provided for the purpose of supplying extra comforts, conveniences or services to any resident in any personal care home, and any funds otherwise received and held from, for or on behalf of any such resident, shall be deposited by the director or other proper officer of the personal care home to the credit of that resident in an account that shall be known as the Resident's Personal Deposit Fund. No more than one (1) month's charge for the care, support, maintenance and medical attention of the resident shall be applied from the account at any one time. After the death, discharge or transfer of any resident for whose benefit any such fund has been provided, any unexpended balance remaining in his personal deposit fund shall be applied for the payment of care, cost of support, maintenance and medical attention that is accrued. If any unexpended balance remains in that resident's personal deposit fund after complete reimbursement has been made for payment of care, support, maintenance and medical attention, and the director or other proper officer of the personal care home has been or shall be unable to locate the person or persons entitled to the unexpended balance, the director or other proper officer may, after the lapse of one (1) year from the date of that death, discharge or transfer, deposit the unexpended balance to the credit of the personal care home's operating fund.

(c) The State Board of Health shall promulgate rules and regulations requiring personal care homes to maintain records relating to health condition, medicine dispensed and administered, and any reaction to that medicine. The director of the personal care home shall be responsible for explaining the availability of those records to the family of the resident at any time upon reasonable request.

(d) This subsection (4) shall stand repealed on July 1, 2017.

(5)(a) For the purposes of this subsection (5):

(i) "Licensed entity" means a hospital, nursing home, personal care home, home health agency, hospice or adult foster care facility;

(ii) "Covered entity" means a licensed entity or a health care professional staffing agency;

(iii) "Employee" means any individual employed by a covered entity, and also includes any individual who by contract provides to the patients, residents or clients being served by the covered entity direct, hands-on, medical patient care in a patient's, resident's or client's room or in treatment or recovery rooms. The term "employee" does not include health care professional/vocational technical students, as defined in Section 37-29-232, performing clinical training in a licensed entity under contracts between their schools and the licensed entity, and does not include students at high schools located in Mississippi who observe the treatment and care of patients in a licensed entity as part of the requirements of an allied-health course taught in the high school, if:

1. The student is under the supervision of a licensed health care provider; and

2. The student has signed an affidavit that is on file at the student's school stating that he or she has not been convicted of or pleaded guilty

or nolo contendere to a felony listed in paragraph (d) of this subsection (5), or that any such conviction or plea was reversed on appeal or a pardon was granted for the conviction or plea. Before any student may sign such an affidavit, the student's school shall provide information to the student explaining what a felony is and the nature of the felonies listed in paragraph (d) of this subsection (5).

However, the health care professional/vocational technical academic program in which the student is enrolled may require the student to obtain criminal history record checks under the provisions of Section 37-29-232.

(b) Under regulations promulgated by the State Board of Health, the licensing agency shall require to be performed a criminal history record check on (i) every new employee of a covered entity who provides direct patient care or services and who is employed on or after July 1, 2003, and (ii) every employee of a covered entity employed before July 1, 2003, who has a documented disciplinary action by his or her present employer. In addition, the licensing agency shall require the covered entity to perform a disciplinary check with the professional licensing agency of each employee, if any, to determine if any disciplinary action has been taken against the employee by that agency.

Except as otherwise provided in paragraph (c) of this subsection (5), no such employee hired on or after July 1, 2003, shall be permitted to provide direct patient care until the results of the criminal history record check have revealed no disqualifying record or the employee has been granted a waiver. In order to determine the employee applicant's suitability for employment, the applicant shall be fingerprinted. Fingerprints shall be submitted to the licensing agency from scanning, with the results processed through the Department of Public Safety's Criminal Information Center. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. The licensing agency shall notify the covered entity of the results of an employee applicant's criminal history record check. If the criminal history record check discloses a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(h), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault, or felonious abuse and/or battery of a vulnerable adult that has not been reversed on appeal or for which a pardon has not been granted, the employee applicant shall not be eligible to be employed by the covered entity.

(c) Any such new employee applicant may, however, be employed on a temporary basis pending the results of the criminal history record check, but any employment contract with the new employee shall be voidable if the new employee receives a disqualifying criminal history record check and no waiver is granted as provided in this subsection (5).

(d) Under regulations promulgated by the State Board of Health, the licensing agency shall require every employee of a covered entity employed before July 1, 2003, to sign an affidavit stating that he or she has not been convicted of or pleaded guilty or nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, any sex offense listed in Section 45-33-23(h), child abuse, arson, grand larceny, burglary, gratification of lust, aggravated assault, or felonious abuse and/or battery of a vulnerable adult, or that any such conviction or plea was reversed on appeal or a pardon was granted for the conviction or plea. No such employee of a covered entity hired before July 1, 2003, shall be permitted to provide direct patient care until the employee has signed the affidavit required by this paragraph (d). All such existing employees of covered entities must sign the affidavit required by this paragraph (d) within six (6) months of the final adoption of the regulations promulgated by the State Board of Health. If a person signs the affidavit required by this paragraph (d), and it is later determined that the person actually had been convicted of or pleaded guilty or nolo contendere to any of the offenses listed in this paragraph (d) and the conviction or plea has not been reversed on appeal or a pardon has not been granted for the conviction or plea, the person is guilty of perjury. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a violent offense, the person, upon a conviction of perjury under this paragraph, shall be punished as provided in Section 97-9-61. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a nonviolent offense, the person, upon a conviction of perjury under this paragraph, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

(e) The covered entity may, in its discretion, allow any employee who is unable to sign the affidavit required by paragraph (d) of this subsection (5) or any employee applicant aggrieved by an employment decision under this subsection (5) to appear before the covered entity's hiring officer, or his or her designee, to show mitigating circumstances that may exist and allow the employee or employee applicant to be employed by the covered entity. The covered entity, upon report and recommendation of the hiring officer, may grant waivers for those mitigating circumstances, which shall include, but not be limited to: (i) age at which the crime was committed; (ii) circumstances surrounding the crime; (iii) length of time since the conviction and criminal history since the conviction; (iv) work history; (v) current employment and character references; and (vi) other evidence demonstrating the ability of the individual to perform the employment responsibilities competently and that the individual does not pose a threat to the health or safety of the patients of the covered entity.

(f) The licensing agency may charge the covered entity submitting the fingerprints a fee not to exceed Fifty Dollars ($50.00), which covered entity may, in its discretion, charge the same fee, or a portion thereof, to the employee applicant. Any costs incurred by a covered entity implementing this subsection (5) shall be reimbursed as an allowable cost under Section 43-13-116.

(g) If the results of an employee applicant's criminal history record check reveals no disqualifying event, then the covered entity shall, within two (2) weeks of the notification of no disqualifying event, provide the employee applicant with a notarized letter signed by the chief executive officer of the covered entity, or his or her authorized designee, confirming the employee applicant's suitability for employment based on his or her criminal history record check. An employee applicant may use that letter for a period of two (2) years from the date of the letter to seek employment with any covered entity without the necessity of an additional criminal history record check. Any covered entity presented with the letter may rely on the letter with respect to an employee applicant's criminal background and is not required for a period of two (2) years from the date of the letter to conduct or have conducted a criminal history record check as required in this subsection (5).

(h) The licensing agency, the covered entity, and their agents, officers, employees, attorneys and representatives, shall be presumed to be acting in good faith for any employment decision or action taken under this subsection (5). The presumption of good faith may be overcome by a preponderance of the evidence in any civil action. No licensing agency, covered entity, nor their agents, officers, employees, attorneys and representatives shall be held liable in any employment decision or action based in whole or in part on compliance with or attempts to comply with the requirements of this subsection (5).

(i) The licensing agency shall promulgate regulations to implement this subsection (5).

(j) The provisions of this subsection (5) shall not apply to:

(i) Applicants and employees of the University of Mississippi Medical Center for whom criminal history record checks and fingerprinting are obtained in accordance with Section 37-115-41; or

(ii) Health care professional/vocational technical students for whom criminal history record checks and fingerprinting are obtained in accordance with Section 37-29-232.

(6) The State Board of Health shall promulgate rules, regulations and standards regarding the operation of adult foster care facilities.

SOURCES: Codes, 1942, § 6964-07; Laws, 1952, ch. 384, § 7; Laws, 1964, ch. 429, § 2; Laws, 1986, ch. 437, § 31; Laws, 1993, ch. 365, § 1; Laws, 2001, ch. 595, § 1; Laws, 2001, ch. 603, § 11; Laws, 2002, ch. 561, § 1; Laws, 2003, ch. 545, § 1; Laws, 2004, ch. 317, § 1; Laws, 2004, ch. 538, § 3; Laws, 2006, ch. 414, § 1; Laws, 2007, ch. 552, § 2; Laws, 2008, ch. 305, § 1; Laws, 2008, ch. 423, § 1; Laws, 2011, ch. 545, § 9; Laws, 2014, ch. 352, § 11, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 1 of ch. 595, Laws of 2001, effective July 1, 2001, amended this section. Section 11 of ch. 603, Laws of 2001, effective July 1, 2001, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent pursuant to a letter to Committee members from the Committee Chairman proposing integration of the amendments, with no member objecting to the integration by June 4, 2001, the deadline set in the letter for objection.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (g) of subsection (5). The word "with" was changed to "without". The Joint Committee ratified the correction at its June 3, 2003 meeting.

Section 1 of ch. 317 Laws of 2004, effective from and after June 30, 2004 (approved April 12, 2004), amended this section. Section 3 of ch. 538, Laws of 2004, effective from and after July 1, 2004 (approved May 13, 2004), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 538, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 305, Laws of 2008, effective from and after June 30, 2008 (approved March 11, 2008), amended this section. Section 1 of ch. 423, Laws of 2008, effective from and after July 1, 2008 (approved April 3, 2008), also amended this section. The amendments to these sections do not conform and do not meet the Joint Committee's criteria for integration. Pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier; therefore, as set out above, this section reflects the language of Section 1 of ch. 423, Laws of 2008.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (5)(b) and (d) by substituting "Section 45-33-23(h)" for "Section 45-33-23(g)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Note — In (5)(b), and (d), there are references to "vulnerable adult" and "vulnerable adults." The "Vulnerable Adult Act" was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357 to change references to "vulnerable adult" to "vulnerable person."

Laws of 2010, ch. 505, § 17, provides:

"SECTION 17. (1) The State Board of Health shall develop and make a report to the Public Health and Welfare Committees of the Senate and House of Representatives prior to the 2011 Regular Session of the Legislature with any necessary legislative recommendations on the following:

"(a) The definitions and standards relating to the licensure of "personal care home," "assisted living facilities," "adult day care facilities" and "psychiatric supervised housing facility" for the purposes of licensure purposes for institutions for the aged or infirm;

"(b) A determination as to whether the rules, regulations and standards adopted by the State Board of Health for personal care homes should be uniform for each of the classifications of personal care homes, but may vary based on the differences between the types of facilities in each classification.

"(2) A determination as to whether the rules, regulations and standards adopted by the State Board of Health for personal care homes should be uniform for each of the classifications of personal care homes, but may vary based on the differences between the types of facilities in each classification."

Amendment Notes — The 2014 amendment extended the repealer provision of (4), by substituting "July 1, 2017" for "June 30, 2014" in (4)(d).

Cross References — Schedule II of Uniform Controlled Substances Law, see § 41-29-115.

Criminal history record checks and fingerprinting for health care professional/vocational technical students, see § 37-29-232.

Criminal history record checks and fingerprinting required for new employees providing direct patient care at University of Mississippi Medical Center, see § 37-115-41.

ATTORNEY GENERAL OPINIONS

The Department of Health may not, in adopting regulations establishing a schedule for updated checks, provide an exemption to employees who change employers during the validity period from being subject to another background check as such an exemption would contradict the statutory language requiring a check "on every new employee of a licensed entity." Thompson, Jr., July 26, 2002, A.G. Op. #02-0360.

Until such time as the Board of Health adopts regulations covering guidelines, procedures and instructions for require criminal history checks, licensed entities cannot be required to comply with the terms of the law pertaining thereto. Steinberger, Sept. 20, 2002, A.G. Op. #02-0476.

Nursing and other allied-health students are "employees" under the definition of subdivision (5)(a) of this section to the extent that clinical training requires hands-on medical patient care and not just observation of care performed by others. Foxworth, Aug. 1, 2003, A.G. Op. 03-0381.

A licensed entity where the student nurse is receiving clinical training shall be notified by the Mississippi State Department of Health of the results of the criminal history record check. The statute does not address releasing the results of the criminal history record check to any other party or entity. Foxworth, Aug. 1, 2003, A.G. Op. 03-0381.

The Department of Health may, in its discretion, adopt a framework such as is set forth in subsection (e) of this section to determine whether the facts and circumstances of a particular case would warrant granting an individual a waiver and permitting him or her to work in a child-care facility. Terney, Apr. 23, 2004, A.G. Op. 04-0124.

Law enforcement officers and employees of fire departments who provide emergency medical care during the course and scope of their official employment are not employees of health care facilities as defined in this section and therefore, do not have to undergo criminal history record checks. However, if a law enforcement officer or fire department employee is enrolled as a student in a health care professional/vocational technical academic program and performs clinical training in a licensed entity, he or she must comply with the law requiting which requires all such students to (a) be under the supervision of a licensed health care provider; and (b) sign affidavits to be on file at the school stating that they have not been convicted of or pleaded guilty or nolo contendere to a felony listed in subdivision (5)(d) of this section, or that any such conviction or plea was reversed on appeal or a pardon was granted for the conviction or plea. Ambulance personnel are subject to the criminal history record check as "employees" of licensed entities if they are employed by an ambulance service which is either (a) owned or operated by a licensed entity or (b) under contract with a licensed entity to transport patients, residents, or clients. Martin, Aug. 27, 2004, A.G. Op. 04-0297.

The Mississippi State Department of Health is the "licensing agency" for purposes of 43-11-13(5). Amy, July 29, 2005, A.G. Op. 05-0365.

Employees of EMS providers who can ever be expected to provide direct, hands-on, medical patient care in a patient's, resident's, or client's room or in a treatment or recovery room to patients, residents, or clients being served by hospitals, nursing homes, personal care homes, home health agencies or hospices, either by virtue of being employed by one of those entities, or through a contract with same, must undergo a criminal history records background check under Section 43-11-13(5). An EMT working for an independent ambulance service that does not have a contract with a covered entity would not be subject to the statute. Amy, July 29, 2005, A.G. Op. 05-0365.

RESEARCH REFERENCES

ALR. Licensing and regulation of nursing or rest homes. 97 A.L.R.2d 1187.

Patient tort liability of rest, convalescent, or nursing homes. 83 A.L.R.3d 871.

Licensing and regulation of nursing or rest homes. 53 A.L.R.4th 689.

Criminal liability under statutes penalizing abuse or neglect of the institutionalized infirm. 60 A.L.R.4th 1153.

Federal criminal liability of licensed physician for unlawfully prescribing or dispensing "controlled substance" or drug in violation of Controlled Substances Act (21 USCS §§ 801 et seq). 33 A.L.R. Fed. 220.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 19, 21, 23, 40 et seq.

24 Am. Jur. Proof of Facts 3d 73, Nursing Home Liability.

CJS. 28 C.J.S. Supp, Drugs and Narcotics § 266.

JUDICIAL DECISIONS

1. Liability.

Supreme Court of Mississippi held that the "Rules, Regulations and Minimum Standards for Institutions for the Aged or Infirm," Miss. Code Ann. § 43-11-13, which serve as internal licensing regulations, do not create a separate cause of action or establish a duty of care owed by nursing home administrators and licensees to nursing home patients. Howard v. Estate of Harper, 947 So. 2d 854 (Miss. 2006).

§ 43-11-15. Effective date of regulations.

Any institution for the aged or infirm which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, under the particular circumstances not to exceed one (1) year from the date of such promulgation, within which to comply with such rules and regulations and minimum standards.

SOURCES: Codes, 1942, § 6964-08; Laws, 1952, ch. 384, § 8, eff from and after passage (approved April 11, 1952).

§ 43-11-16. Medical records not public documents but property of institutions for aged and infirm.

Medical records are and shall remain the property of the various institutions for the aged or infirm, subject, however, to reasonable access to the information contained therein upon written request by the resident, his legally appointed representatives, his attending medical personnel and his duly authorized nominees, and upon payment of any reasonable charges for such service. Nothing in this section shall be construed to deny access to medical records by the Attorney General, the licensing agency, or his or its agents and investigators in the discharge of their official duties under this chapter. Except as otherwise provided by law, medical records shall not constitute public records and nothing in this section shall be deemed to impair any privilege of confidence conferred by law or the Mississippi Rules of Evidence on residents, their personal representatives or heirs by Section 13-1-21.

SOURCES: Laws 2002, 3rd Ex Sess, ch. 2, § 10, eff from and after January 1, 2003.

Cross References — Limitations on charges permitted for photocopying patients' records by medical provider; physicians to make reasonable charges for depositions, see § 11-1-52.

§ 43-11-17. Inspections.

The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary.

SOURCES: Codes, 1942, § 6964-09; Laws, 1952, ch. 384, § 9, eff from and after passage (approved April 11, 1952).

§ 43-11-19. Information confidential.

Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals, except in a proceeding involving the questions of licensure; however, the licensing agency may utilize statistical data concerning types of services and the utilization of those services for institutions for the aged or infirm in performing the statutory duties imposed upon it by Section 41-7-171, et seq. and by Section 43-11-21.

SOURCES: Codes, 1942, § 6964-10; Laws, 1952, ch. 384, § 10; Laws, 1984, ch. 362, § 2, eff from and after July 1, 1984.

§ 43-11-21. Annual report of licensing agency.

The licensing agency shall prepare and publish an annual report of its activities and operations under this chapter. A reasonable number of copies of such publications shall be available in the office of the licensing agency to be furnished free to persons requesting them.

SOURCES: Codes, 1942, § 6964-11; Laws, 1952, ch. 384, § 11, eff from and after passage (approved April 11, 1952).

Cross References — Use of statistical data compiled under this section, see § 43-11-19.

§ 43-11-23. Judicial review.

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing, may within thirty (30) days after the mailing or serving of notice of the decision as provided in Section 43-11-11, file a notice of appeal in the chancery court of the First Judicial District of Hinds County or the chancery court of the county in which the institution is located or to be located, and the chancery clerk thereof shall serve a copy of the notice of appeal upon the licensing agency. Thereupon the licensing agency shall, within sixty (60) days or such additional time as the court may allow from the service of such notice, certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Findings of fact by the licensing agency shall be conclusive unless substantially contrary to the weight of the evidence but upon good cause shown, the court may remand the case to the licensing agency to take further evidence, and the licensing agency may thereupon affirm, reverse or modify its decision. The court may affirm, modify or reverse the decision of the licensing agency and either the applicant or licensee or the licensing agency may appeal from this decision to the Supreme Court as in other cases in the chancery court. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs as in other cases in chancery shall apply equally to cases hereunder.

SOURCES: Codes, 1942, § 6964-12; Laws, 1952, ch. 384, § 12; Laws, 1980, ch. 493, § 20; Laws, 1986, ch. 437, § 32, eff from and after July 1, 1986.

Cross References — Application of this section to appeals from denial, suspension or revocation of license to operate ambulatory surgical facility, see § 41-75-11.

Applicability of this section to appeals from decisions relative to the licensing of birthing centers, see § 41-77-19.

§ 43-11-25. Penalties.

Any person establishing, conducting, managing or operating an institution for the aged or infirm without a license under this chapter shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars ($1,000.00) for the first offense and not more than one thousand dollars ($1,000.00) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

SOURCES: Codes, 1942, § 6964-13; Laws, 1952, ch. 384, § 13; Laws, 1980, ch. 493, § 21, eff from and after passage (approved May 13, 1980).

Cross References — Imposition of standard state assessment in addiction to all court imposed fines or other penalties for misdemeanor violations, see § 99-19-73.

§ 43-11-27. Injunction.

Notwithstanding the existence or pursuit of any other remedy, the licensing agency may, in the manner provided by law, upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the licensing agency in the proceedings, maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of an institution for the aged or infirm without a license under this chapter.

SOURCES: Codes, 1942, § 6964-14; Laws, 1952, ch. 384, § 14; Laws, 2012, ch. 546, § 16, eff from and after July 1, 2012.

Cross References — Suits by Attorney General, see § 7-5-37.
Injunctions, generally, see §§ 11-13-1 et seq.

CHOICE OF PHARMACY PROVIDERS IN LONG-TERM CARE FACILITIES

SEC.
43-11-41. Freedom of choice of pharmacy providers for patients in long-term care facilities.

§ 43-11-41. Freedom of choice of pharmacy providers for patients in long-term care facilities.

(1) This section shall apply to patients in long-term care facilities, as defined in subsection (2) of this section. It is the intent of the Legislature that the State of Mississippi shall be a "right-to-choose" state for the purposes of Medicaid and Medicare benefits, excluding Medicare Part A, and that patients of long-term care facilities shall have the same rights and privileges concerning pharmacy providers as participants or beneficiaries of health benefit plans.

(2) "Long-term care facility" means any skilled nursing facility, extended care home, intermediate care facility, personal care home or boarding home that is subject to regulation or licensure by the State Department of Health.

(3) A patient in a long-term care facility shall not be limited in his choice of a pharmacy or pharmacist provider if that provider meets the same standards of dispensing guidelines required of long-term care facilities.

(4) A long-term care facility may require that a patient or the person who normally makes health care decisions on behalf of the patient sign a document that identifies his pharmacy or pharmacist provider of choice and that releases the facility of any liability for the dispensing of the prescription until the facility accepts control of the dispensed drug.

SOURCES: Laws, 2007, ch. 460, § 1, eff from and after July 1, 2007.

CHAPTER 13

Medical Assistance for the Aged; Medicaid

Article 1. Medical Assistance for the Aged 43-13-1
Article 3. Medicaid 43-13-101
Article 5. Medicaid Fraud Control Act 43-13-201
Article 7. Third Party Liability for Medical Payments 43-13-301
Article 9. Health Care Trust Fund for Tobacco Settlement Funds 43-13-401
Article 11. Drug Repository Program 43-13-501
Article 13. Mississippi Long-term Care Partnership Program 43-13-601

Article 1.

Medical Assistance for the Aged.

Sec.
43-13-1. Citation of article.
43-13-3. Definitions.
43-13-5. Medical assistance for the aged.
43-13-7. Obligations upon the administering agency.
43-13-9. Medical advisory committee.
43-13-11. Program administration and vendor payments.
43-13-13. Penalties.

§ 43-13-1. Citation of article.

This article shall be known as and may be cited as the "Medical Assistance for the Aged Law."

SOURCES: Codes, 1942, § 7290-01; Laws, 1964, ch. 446, § 1, eff from and after passage (approved June 11, 1964).

Cross References — Social security and state retirement and disability benefits, see §§ 25-11-1 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Department of Human Services to be Department of Public Welfare, see § 43-1-1.

Mandatory state supplemental payments to aged and blind persons and persons with disabilities, see §§ 43-1-31 through 43-1-37.

Old age assistance, see §§ 43-9-1 et seq.

Federal Aspects — Health Insurance for Aged and Disabled (Medicare), see 42 USCS §§ 1395 et seq.

RESEARCH REFERENCES

Practice References. Eric M. Carlson, Long-Term Care Advocacy (Matthew Bender).

Elder Law Library (CD-ROM) (LexisNexis).

Health Care Administration Library (CD-ROM) (LexisNexis).

§ 43-13-3. Definitions.

Unless the context clearly requires a different meaning as used in this article:

(1) "Medical assistance for the aged" means payment of part or all of the cost of the following care and services provided for persons sixty-five (65) years of age or older who are not recipients of old age assistance but whose income and resources are insufficient to meet all of such cost:

(a) Inpatient hospital services;
(b) Skilled nursing-home services;
(c) Physicians' services;
(d) Outpatient hospital or clinic services;
(e) Home health care services;
(f) Private duty nursing service;
(g) Physical therapy and related services;
(h) Dental and optometric services;
(i) Laboratory and X-ray services;
(j) Prescribed drugs, eyeglasses, dentures, and prosthetic devices;
(k) Diagnostic, screening, and preventive services; and
(*l*) Any other medical care or remedial care recognized under state law.

(2) The definitions of the care and services listed above shall be in keeping with Title I or Title XVI of the federal Social Security Act as amended, the rules and regulations promulgated by the secretary of health, education, and welfare, and the state licensing laws governing such care and services when licensing is required.

(3) "Administering agency" means the state department of public welfare, the state board of public welfare of which shall have the duty of making and publishing rules and regulations, not inconsistent with the terms of this article, as may be necessary for its efficient administration.

(4) "A vendor payment" is a payment made directly to a supplier or provider of medical and remedial care or service on behalf of an eligible recipient of medical assistance to the aged.

SOURCES: Codes, 1942, § 7290-02; Laws, 1964, ch. 446, § 2, eff from and after passage (approved June 11, 1964).

Cross References — Department of Human Services to be Department of Public Welfare, see § 43-1-1.

Institutions for the aged and infirm, see §§ 43-11-1 et seq.

Federal Aspects — Title I of the Social Security Act, see 42 USCS §§ 301 et seq.

Title XVI of the Social Security Act, see §§ 1381 note through 1385 note.

§ 43-13-5. Medical assistance for the aged.

The State Department of Public Welfare, after having made a determination with respect to eligibility with due regard to the resources and income of the applicant, may make vendor payments on behalf of eligible individuals for such care as may be authorized within the limits of available funds, provided that such medical or remedial care is rendered by or under the supervision of a licensed practitioner, and provided further that no regulation shall be promulgated which limits or abridges the recipient's free choice of the provider of medical and remedial care or service. Such recipients of medical assistance for the aged shall only be persons:

(1) Who shall have attained the age of sixty-five (65) years;

(2) Who are not receiving old age assistance;

(3) Who have net income and resources not exceeding amounts as may be set forth from time to time by the administering agency of the state; and

(4) Who have not made a voluntary assignment or transfer of property for the purpose of qualifying for such assistance at any time within two (2) years immediately prior to the filing of an application for medical assistance for the aged.

Medical assistance for the aged shall be payable under this article on behalf of any person who is a patient of an institution, public or private, where such payments are matchable under the provisions of the federal Social Security Act as amended and where such institution conforms to the requirements of the federal Social Security Act as amended and the applicable statutes of Mississippi.

SOURCES: Codes, 1942, § 7290-03; Laws, 1964, ch. 446, § 3, eff from and after passage (approved June 11, 1964).

Cross References — Department of Human Services to be Department of Public Welfare, see § 43-1-1.

Disclosure of records of public assistance payments and disbursements, see § 43-1-19.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

Health Insurance for Aged and Disabled (Medicare), see 42 USCS §§ 1395 et seq.

§ 43-13-7. Obligations upon the administering agency.

The administering agency, in providing medical assistance for the aged, shall:

(1) Include some institutional and some noninstitutional medical care;

(2) Provide an opportunity for hearing before an appeals and review body within the agency for any applicant whose application is denied upon request by such applicant, who has been denied the opportunity to apply for such assistance, whose application has not been acted upon with reasonable promptness, whose benefit hereunder has not been forthcoming with reasonable promptness after a determination of eligibility and approval of the application has been made, whose benefit authorization has been revoked, and/or whose benefit authorization is reduced;

(3) Provide that, in the issuance of regulations, no enrollment fee, premium, or similar charge may be imposed as a condition of the individual's eligibility for such assistance;

(4) Provide for the furnishing of such assistance to residents of the state who are temporarily absent therefrom;

(5) Publish and make available a description of services to be provided to help recipients attain self-care including utilization of other agencies providing similar or related services;

(6) Provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the state program;

(7) Establish reasonable standards for determining eligibility for and the extent of such assistance;

(8) Provide that no lien will be imposed on the property of the recipient prior to his death and that there will be no recovery until after death from such a recipient and the surviving spouse, if any, for any medical assistance correctly paid on behalf of such recipient; and

(9) Promulgate no citizenship requirement for eligibility which excludes a citizen of the United States.

SOURCES: Codes, 1942, § 7290-04; Laws, 1964, ch. 446, § 4, eff from and after passage (approved June 11, 1964).

§ 43-13-9. Medical advisory committee.

The state board of public welfare shall appoint a medical advisory committee consisting of not less than nine (9) nor more than twenty (20) physicians from among nominees made by the Mississippi State Medical Association whose respective tenures of service shall be not less than two (2) nor more than four (4) years. Members of this committee shall serve without compensation, but expenses to defray actual expenses incurred in the performance of travel, lodging, and subsistence may be authorized, shall meet not less than twice annually, and shall be furnished written notice of meetings called at least ten (10) days prior to the date of the meeting. The state board of public welfare may also appoint one (1) person from each of the other medical or remedial care professions to serve as members of the medical advisory committee if, in the opinion of the board, their service on said committee would be helpful to the state department of public welfare in administering the provisions of this article. The committee, among its duties and responsibilities prescribed and agreed to, shall:

(1) Advise the administering agency and personnel thereof with respect to determining the quantity and extent of medical care provided under this article;

(2) Communicate the views of the medical care professions in these respects to the administering agency;

(3) Communicate the views of the administering agency in these respects to the medical care professions; and

(4) Encourage physicians and other medical care personnel to participate in medical care programs herein authorized and prescribed, although such participation shall not be mandatory upon any such personnel.

SOURCES: Codes, 1942, § 7290-05; Laws, 1964, ch. 446, § 5, eff from and after passage (approved June 11, 1964).

Cross References — Terms "State Board of Public Welfare and "State Department of Public Welfare" to mean Board of Human Services, see § 43-1-1.

§ 43-13-11. Program administration and vendor payments.

The administering agency is authorized to contract with other state government and nongovernment agencies and organizations in the State of Mississippi for purposes of performing all or part of the administrative aspects of medical or remedial care programs herein authorized, paying a reasonable fee for such service.

SOURCES: Codes, 1942, § 7290-06; Laws, 1964, ch. 446, § 6, eff from and after passage (approved June 11, 1964).

Cross References — Cessation of institutional reimbursements for failure to disclose or provide access to records, see § 43-13-229.

§ 43-13-13. Penalties.

Any person, making application for benefits under this article for himself or for another person, and any vendor, who knowingly makes a false statement or false representation or fails to disclose a material fact to obtain or increase any benefit or payment under this article shall be guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine not to exceed one hundred dollars ($100.00), or imprisoned not to exceed thirty (30) days, or both such fine and imprisonment. Each subsequent false statement or false representation or failure to disclose a material fact shall constitute a separate offense.

SOURCES: Codes, 1942, § 7290-07; Laws, 1964, ch. 446, § 7, eff from and after passage (approved June 11, 1964).

Cross References — Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 3.

MEDICAID.

SEC.

43-13-101. Title of article.

43-13-103. Purpose.

43-13-105. Definitions.

43-13-107. Division of Medicaid created; director and other personnel; Medical Care Advisory Committee; Drug Use Review Board; Pharmacy and Therapeutics Committee.

43-13-109. Rules and regulations for procurement of employees.

43-13-111. Budgets of state health agencies.

43-13-113.	Receipt and disbursement of funds; contingency plan; contracting for donated dental services program.
43-13-115.	Persons entitled to receive Medicaid.
43-13-115.1.	Repealed.
43-13-116.	Authority to determine Medicaid eligibility; agreements with state and federal agencies; administrative hearings; authority to hire employees.
43-13-116.1.	Asset verification program; data match system with financial institutions; authority of division to request and financial institution to provide additional financial information as needed to verify eligibility.
43-13-117.	Types of care and services for which financial assistance furnished [Paragraph (A)(10) repealed effective July 1, 2016; Section repealed effective June 30, 2018].
43-13-117.1.	Nursing facility services funds for certain nursing facility residents may be transferred to cover costs of services available through home- and community-based waiver programs.
43-13-117.2.	Study on implementation of pilot program to provide chronic disease management of chronic obstructive pulmonary disease.
43-13-117.3.	Repealed.
43-13-118.	Records of provider participating in Medicaid program.
43-13-119.	Division of Medicaid to design and implement temporary program to provide nonemergency transportation to locations for dialysis services for certain persons; transportation providers; relationship to Medicaid program [Repealed effective July 1, 2016].
43-13-120.	Division of Medicaid deemed beneficiary of certain recipients who die intestate and without heirs.
43-13-121.	Authority to administer article.
43-13-122.	Division authorized to apply for federal, private and public waivers, grants and contributions; implementation of integrated case-mix payment and quality monitoring system.
43-13-123.	Methods of providing for payment of claims.
43-13-125.	Recovery of Medicaid payments from third parties; compromise or settlement of claims; plaintiff's recovery of medical expenses as special damages; disposition of funds received.
43-13-126.	Health insurers required to provide certain information to Division of Medicaid, accept Division's right of recovery and not deny claims submitted by Division on the basis of certain errors as condition of doing business in Mississippi.
43-13-127.	Reports and recommendations required of Division of Medicaid.
43-13-129.	Misrepresentation by applicant for benefits or by provider of services; penalty.
43-13-131.	Influencing recipient to elect particular provider or type of services for purpose of obtaining increase in benefits or payments; penalties.
43-13-133.	Intent as to use of federal matching funds.
43-13-135.	Repealed.
43-13-137.	Division to comply with Administrative Procedure Law.
43-13-139.	Governor authorized to discontinue or limit medical assistance to optional groups; division to cease state funding upon discontinuance of federal funding.
43-13-141.	Repealed.
43-13-143.	Medical Care Fund.
43-13-145.	Assessment levied upon health care facilities; keeping of records; collection of assessments; effect of delinquency in payment [Subsections (4) and (10) through (16) repealed effective July 1, 2018].
43-13-147.	Mississippi Medicaid Program and Children's Health Insurance Program to examine and improve hospital discharge and follow-up care

procedures for certain premature infants and implement programs to improve newborn outcomes; reporting of data regarding rehospitalization of certain premature infants.
43-13-149. Medicaid planners; definitions; annual registration with Division of Medicaid required; bond [Repealed effective July 1, 2017].

§ 43-13-101. Title of article.

This article shall be entitled and cited as the "Mississippi Medicaid Law."

SOURCES: Codes, 1942, § 7290-31; Laws, 1969, Ex Sess, ch. 37, § 1, eff from and after passage (approved October 10, 1969).

Cross References — Social security and state retirement and disability benefits, see §§ 25-11-1 et seq.

Certificate of need issued for construction of certain health care facilities and skilled nursing home care if the owner of the facility agrees in writing not to participate in Medicaid program, see § 41-7-191.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

Old age assistance, see §§ 43-9-1 et seq.

Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Provisions relative to third party liability for medical payments and transmission of information regarding such liability to the Division of Medicaid, see Article 7 of this chapter (§§ 43-13-301 et seq).

Federal Aspects — Grants to States for Medical Assistance Programs (Medicaid), see 42 USCS §§ 1396 et seq.

RESEARCH REFERENCES

Practice References. Health Care Administration Library (CD-ROM) (LexisNexis).

§ 43-13-103. Purpose.

For the purpose of affording health care and remedial and institutional services in accordance with the requirements for federal grants and other assistance under Titles XVIII, XIX and XXI of the Social Security Act, as amended, a statewide system of medical assistance is established and shall be in effect in all political subdivisions of the state, to be financed by state appropriations and federal matching funds therefor, and to be administered by the Office of the Governor as hereinafter provided.

SOURCES: Codes, 1942, § 7290-32; Laws, 1969, Ex Sess, ch. 37, § 2; Laws, 1984, ch. 488, § 39; Laws, 2000, ch. 301, § 1, eff from and after July 1, 1999.

Editor's Note — Chapter 301 of Laws of 2000 was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the

State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

Federal Aspects — Titles XVIII, XIX and XXI of the Social Security Act appear as 42 USCS §§ 1395 through 1395ccc, 42 USCS §§ 1396 through 1396v, and 42 USCS §§ 1397aa through 1397jj respectively.

Grants to States for Medical Assistance Programs (Medicaid), see 42 USCS §§ 1396 et seq.

§ 43-13-105. Definitions.

When used in this article, the following definitions shall apply, unless the context requires otherwise:

(a) "Administering agency" means the Division of Medicaid in the Office of the Governor as created by this article.

(b) "Division" or "Division of Medicaid" means the Division of Medicaid in the Office of the Governor.

(c) "Medical assistance" means payment of part or all of the costs of medical and remedial care provided under the terms of this article and in accordance with provisions of Titles XIX and XXI of the Social Security Act, as amended.

(d) "Applicant" means a person who applies for assistance under Titles IV, XVI, XIX or XXI of the Social Security Act, as amended, and under the terms of this article.

(e) "Recipient" means a person who is eligible for assistance under Title XIX or XXI of the Social Security Act, as amended and under the terms of this article.

(f) "State health agency" means any agency, department, institution, board or commission of the State of Mississippi, except the University of Mississippi Medical School, which is supported in whole or in part by any public funds, including funds directly appropriated from the State Treasury, funds derived by taxes, fees levied or collected by statutory authority, or any other funds used by "state health agencies" derived from federal sources, when any funds available to such agency are expended either directly or indirectly in connection with, or in support of, any public health, hospital, hospitalization or other public programs for the preventive treatment or actual medical treatment of persons with a physical disability, mental illness or an intellectual disability.

(g) "Mississippi Medicaid Commission" or "Medicaid Commission," wherever they appear in the laws of the State of Mississippi, means the Division of Medicaid in the Office of the Governor.

SOURCES: Codes, 1942, § 7290-33; Laws, 1969, Ex Sess, ch. 37, § 3; Laws, 1980, ch. 508, § 4; Laws, 1984, ch. 488, § 40; Laws, 2000, ch. 301, § 2; Laws, 2010, ch. 476, § 70, eff from and after passage (approved Apr. 1, 2010).

Editor's Note — Chapter 301 of Laws of 2000 was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The

Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Cross References — Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

State Department of Public Welfare, see § 43-1-1.

Submission and approval of budgets of state health agencies, see § 43-13-111.

Federal Aspects — Titles IV, XVI, XIX and XXI of the Social Security Act appear as 42 USCS §§ 601 through 687, 42 USCS §§ 1381 note through 1385 note, 42 USCS §§ 1396 through 1396v, and 42 USCS §§ 1397aa through 1397jj, respectively.

§ 43-13-107. Division of Medicaid created; director and other personnel; Medical Care Advisory Committee; Drug Use Review Board; Pharmacy and Therapeutics Committee.

(1) The Division of Medicaid is created in the Office of the Governor and established to administer this article and perform such other duties as are prescribed by law.

(2)(a) The Governor shall appoint a full-time executive director, with the advice and consent of the Senate, who shall be either (i) a physician with administrative experience in a medical care or health program, or (ii) a person holding a graduate degree in medical care administration, public health, hospital administration, or the equivalent, or (iii) a person holding a bachelor's degree in business administration or hospital administration, with at least ten (10) years' experience in management-level administration of Medicaid programs. The executive director shall be the official secretary and legal custodian of the records of the division; shall be the agent of the division for the purpose of receiving all service of process, summons and notices directed to the division; shall perform such other duties as the Governor may prescribe from time to time; and shall perform all other duties that are now or may be imposed upon him or her by law.

(b) The executive director shall serve at the will and pleasure of the Governor.

(c) The executive director shall, before entering upon the discharge of the duties of the office, take and subscribe to the oath of office prescribed by the Mississippi Constitution and shall file the same in the Office of the Secretary of State, and shall execute a bond in some surety company authorized to do business in the state in the penal sum of One Hundred Thousand Dollars ($100,000.00), conditioned for the faithful and impartial discharge of the duties of the office. The premium on the bond shall be paid as provided by law out of funds appropriated to the Division of Medicaid for contractual services.

(d) The executive director, with the approval of the Governor and subject to the rules and regulations of the State Personnel Board, shall employ such professional, administrative, stenographic, secretarial, clerical and technical assistance as may be necessary to perform the duties required in administering this article and fix the compensation for those persons, all in accordance with a state merit system meeting federal requirements. When the salary of the executive director is not set by law, that salary shall be set by the State Personnel Board. No employees of the Division of Medicaid shall be considered to be staff members of the immediate Office of the Governor; however, Section 25-9-107(c)(xv) shall apply to the executive director and other administrative heads of the division.

(3)(a) There is established a Medical Care Advisory Committee, which shall be the committee that is required by federal regulation to advise the Division of Medicaid about health and medical care services.

(b) The advisory committee shall consist of not less than eleven (11) members, as follows:

(i) The Governor shall appoint five (5) members, one (1) from each congressional district and one (1) from the state at large;

(ii) The Lieutenant Governor shall appoint three (3) members, one (1) from each Supreme Court district;

(iii) The Speaker of the House of Representatives shall appoint three (3) members, one (1) from each Supreme Court district.

All members appointed under this paragraph shall either be health care providers or consumers of health care services. One (1) member appointed by each of the appointing authorities shall be a board-certified physician.

(c) The respective Chairmen of the House Medicaid Committee, the House Public Health and Human Services Committee, the House Appropriations Committee, the Senate Public Health and Welfare Committee and the Senate Appropriations Committee, or their designees, two (2) members of the State Senate appointed by the Lieutenant Governor and one (1) member of the House of Representatives appointed by the Speaker of the House, shall serve as ex officio nonvoting members of the advisory committee.

(d) In addition to the committee members required by paragraph (b), the advisory committee shall consist of such other members as are necessary to meet the requirements of the federal regulation applicable to the advisory committee, who shall be appointed as provided in the federal regulation.

(e) The chairmanship of the advisory committee shall be elected by the voting members of the committee annually and shall not serve more than two (2) consecutive years as chairman.

(f) The members of the advisory committee specified in paragraph (b) shall serve for terms that are concurrent with the terms of members of the Legislature, and any member appointed under paragraph (b) may be reappointed to the advisory committee. The members of the advisory committee specified in paragraph (b) shall serve without compensation, but shall receive reimbursement to defray actual expenses incurred in the performance of committee business as authorized by law. Legislators shall receive per diem and expenses, which may be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session.

(g) The advisory committee shall meet not less than quarterly, and advisory committee members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(h) The executive director shall submit to the advisory committee all amendments, modifications and changes to the state plan for the operation of the Medicaid program, for review by the advisory committee before the amendments, modifications or changes may be implemented by the division.

(i) The advisory committee, among its duties and responsibilities, shall:

(i) Advise the division with respect to amendments, modifications and changes to the state plan for the operation of the Medicaid program;

(ii) Advise the division with respect to issues concerning receipt and disbursement of funds and eligibility for Medicaid;

(iii) Advise the division with respect to determining the quantity, quality and extent of medical care provided under this article;

(iv) Communicate the views of the medical care professions to the division and communicate the views of the division to the medical care professions;

(v) Gather information on reasons that medical care providers do not participate in the Medicaid program and changes that could be made in the program to encourage more providers to participate in the Medicaid program, and advise the division with respect to encouraging physicians and other medical care providers to participate in the Medicaid program;

(vi) Provide a written report on or before November 30 of each year to the Governor, Lieutenant Governor and Speaker of the House of Representatives.

(4)(a) There is established a Drug Use Review Board, which shall be the board that is required by federal law to:

(i) Review and initiate retrospective drug use, review including ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving Medicaid benefits or associated with specific drugs or groups of drugs.

(ii) Review and initiate ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews.

(iii) On an ongoing basis, assess data on drug use against explicit predetermined standards using the compendia and literature set forth in federal law and regulations.

(b) The board shall consist of not less than twelve (12) members appointed by the Governor, or his designee.

(c) The board shall meet at least quarterly, and board members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(d) The board meetings shall be open to the public, members of the press, legislators and consumers. Additionally, all documents provided to board members shall be available to members of the Legislature in the same manner, and shall be made available to others for a reasonable fee for copying. However, patient confidentiality and provider confidentiality shall be protected by blinding patient names and provider names with numerical or other anonymous identifiers. The board meetings shall be subject to the Open Meetings Act (Sections 25-41-1 through 25-41-17). Board meetings conducted in violation of this section shall be deemed unlawful.

(5)(a) There is established a Pharmacy and Therapeutics Committee, which shall be appointed by the Governor, or his designee.

(b) The committee shall meet as often as needed to fulfill its responsibilities and obligations as set forth in this section, and committee members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(c) The committee meetings shall be open to the public, members of the press, legislators and consumers. Additionally, all documents provided to committee members shall be available to members of the Legislature in the same manner, and shall be made available to others for a reasonable fee for copying. However, patient confidentiality and provider confidentiality shall be protected by blinding patient names and provider names with numerical or other anonymous identifiers. The committee meetings shall be subject to the Open Meetings Act (Sections 25-41-1 through 25-41-17). Committee meetings conducted in violation of this section shall be deemed unlawful.

(d) After a thirty-day public notice, the executive director, or his or her designee, shall present the division's recommendation regarding prior approval for a therapeutic class of drugs to the committee. However, in circumstances where the division deems it necessary for the health and safety of Medicaid beneficiaries, the division may present to the committee its recommendations regarding a particular drug without a thirty-day public notice. In making that presentation, the division shall state to the committee the circumstances that precipitate the need for the committee to review the status of a particular drug without a thirty-day public notice. The committee may determine whether or not to review the particular drug under the circumstances stated by the division without a thirty-day public notice. If the committee determines to review the status of the particular drug, it shall make its recommendations to the division, after which the division shall file those recommendations for a thirty-day public comment under Section 25-43-7(1).

(e) Upon reviewing the information and recommendations, the committee shall forward a written recommendation approved by a majority of the committee to the executive director, or his or her designee. The decisions of the committee regarding any limitations to be imposed on any drug or its use for a specified indication shall be based on sound clinical evidence found in labeling, drug compendia, and peer reviewed clinical literature pertaining to use of the drug in the relevant population.

(f) Upon reviewing and considering all recommendations including recommendations of the committee, comments, and data, the executive director shall make a final determination whether to require prior approval of a therapeutic class of drugs, or modify existing prior approval requirements for a therapeutic class of drugs.

(g) At least thirty (30) days before the executive director implements new or amended prior authorization decisions, written notice of the executive director's decision shall be provided to all prescribing Medicaid providers, all Medicaid enrolled pharmacies, and any other party who has requested the notification. However, notice given under Section 25-43-7(1) will substitute for and meet the requirement for notice under this subsection.

(h) Members of the committee shall dispose of matters before the committee in an unbiased and professional manner. If a matter being considered by the committee presents a real or apparent conflict of interest for any member of the committee, that member shall disclose the conflict in writing to the committee chair and recuse himself or herself from any discussions and/or actions on the matter.

SOURCES: Codes, 1942, § 7290-34; Laws, 1969, Ex Sess, ch. 37, § 4; Laws, 1973, ch. 312, § 1; Laws, 1980, ch. 560, § 10; Laws, 1984, ch. 488, § 41; Laws, 2000, ch. 301, § 3; Laws, 2000, ch. 498, § 1; Laws, 2002, ch. 304, § 4; Laws, 2003, ch. 543, § 4; Laws, 2004, ch. 593, § 1; Laws, 2007, ch. 553, § 1 ; brought forward without change, Laws, 2008, ch. 360, § 1; Laws, 2009, 2nd Ex Sess, ch. 118, § 1; Laws, 2012, ch. 530, § 1; Laws, 2013, 2nd Ex Sess, ch. 1, § 1; Laws, 2015, ch. 473, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 3 of ch. 301, Laws of 2000, effective from and after July 1, 1999, amended this section. Section 1 of ch. 498, Laws of 2000, effective from and after its passage (approved April 27, 2000), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 498, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — Laws of 1984, ch. 488, § 43(1), provides as follows:

"SECTION 43(1). Employees of the Mississippi Medicaid Commission holding positions on June 30, 1984, shall be employees of the Division of Medicaid in the Office of the Governor on July 1, 1984. All offices, equipment, supplies, services, programs and other activities of the Mississippi Medicaid Commission are hereby made offices, equipment, supplies, services, programs and other activities of the Division of Medicaid in the Office of the Governor."

Chapter 301 of Laws of 2000 was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Laws of 2014, ch. 488, § 7, provides:

"SECTION 7. Not later than December 15, 2014, the Division of Medicaid shall prepare and deliver a report to the Chairmen of the Senate Public Health and Welfare Committee and the House Medicaid Committee on the impact of referrals by physicians for advanced imaging services using equipment owned in full or in part by the referring physician. The report shall include data on referral patterns that may indicate fraud or abuse."

Amendment Notes — The 2015 amendment substituted "as often as needed to fulfill its responsibilities and obligations as set forth in this section" for "at least quarterly" in (5)(b).

Cross References — Oath of office, see Miss. Const. Art. 14, § 268.

Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

For provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

Mississippi Open Meetings Act, see §§ 25-41-1 et seq.

Approval by Division of Medicaid for stay in swing bed of hospital in excess of 30 days, see § 41-7-191.

Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

Use of funds appropriated by medicaid commission in order to provide program of supplemental benefits for adoption, see § 93-17-57.

Provisions relative to third party liability for medical payments and transmission of information regarding such liability to the Division of Medicaid, see Article 7 of this chapter (§§ 43-13-301 et seq).

Federal Aspects — Medicaid, see 42 USCS §§ 1396 et seq.

ATTORNEY GENERAL OPINIONS

Meetings of Medicaid's Drug Use Review Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. Moak, July 19, 2002, A.G. Op. #02-0355.

Meetings of Medicaid's Pharmacy and Therapeutics Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. Moak, July 19, 2002, A.G. Op. #02-0355.

The Medicaid agency may refer members of the public to the website to obtain copies of documents, agendas, and notices of committee meetings which are available at the website; if a member of the public does not have access to the internet, then the Medicaid agency should provide copies for a reasonable fee to members of the public. Moak, July 19, 2002, A.G. Op. #02-0355.

JUDICIAL DECISIONS

1. In general.

Section 57-1-3, which regulates the Board of Economic Development, § 25-11-15, which regulates the Board of Trustees of the Public Employees' Retirement System, § 25-53-7, which regulates the Central Data Processing Authority [Mississippi Department of Information Technology Services], § 25-9-109, which regulates the State Personnel Board, § 43-13-107, which regulates the Medicaid Commission, § 29-5-1, which regulates the Capitol Commission, § 49-5-61, which regulates the Wild Life Heritage Committee, and § 47-5-12 [repealed], which regulates the Board of Corrections, are unconstitutional, insofar as they create executive boards and commissions with legislative members, in violation of Miss. Const. Art 1 § 2, and, accordingly, named legislators could not constitutionally perform any of the executive functions of those boards and commissions; moreover, §§ 27-103-1 [repealed], 29-5-1, 57-1-3, 43-13-107, 25-53-7, 25-9-109, and 49-5-61, are unconstitutional insofar as they mandate legislative appointments to executive offices. Alexander v. State ex rel. Allain, 441 So. 2d 1329 (Miss. 1983).

§ 43-13-109. Rules and regulations for procurement of employees.

The director, with the approval of the governor and pursuant to the rules and regulations of the state personnel board, may adopt reasonable rules and regulations to provide for an open, competitive or qualifying examination for all employees of the division other than the director, part-time consultants and professional staff members.

SOURCES: Codes, 1942, § 7290-35; Laws, 1969, Ex Sess, ch. 37, § 5; Laws, 1984, ch. 488, § 42, eff from and after July 1, 1984.

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

§ 43-13-111. Budgets of state health agencies.

Every state health agency, as defined in Section 43-13-105, shall obtain an appropriation of state funds from the state Legislature for all medical assistance programs rendered by the agency and shall organize its programs and budgets in such a manner as to secure maximum federal funding through the Division of Medicaid under Title XIX or Title XXI of the federal Social Security Act, as amended.

SOURCES: Codes, 1942, § 7290-36; Laws, 1969, Ex Sess, ch. 37, § 6; Laws, 1984, ch. 488, § 44; Laws, 2000, ch. 301, § 4, eff from and after July 1, 1999.

Editor's Note — Chapter 301 of Laws of 2000, was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

Definition of State Health agency, see § 43-13-105(f).

Federal Aspects — Titles XIX and XXI of the Social Security Act appear as 42 USCS §§ 1396 through 1396v and 42 USCS §§ 1397aa through 1397jj respectively.

Medicaid, see 42 USCS §§ 1396 et seq.

§ 43-13-113. Receipt and disbursement of funds; contingency plan; contracting for donated dental services program.

(1) The State Treasurer shall receive on behalf of the state, and execute all instruments incidental thereto, federal and other funds to be used for financing the medical assistance plan or program adopted pursuant to this article, and place all such funds in a special account to the credit of the Governor's Office-Division of Medicaid, which funds shall be expended by the division for the purposes and under the provisions of this article, and shall be paid out by the State Treasurer as funds appropriated to carry out the provisions of this article are paid out by him.

The division shall issue all checks or electronic transfers for administrative expenses, and for medical assistance under the provisions of this article. All such checks or electronic transfers shall be drawn upon funds made available to the division by the State Auditor, upon requisition of the director. It is the purpose of this section to provide that the State Auditor shall transfer, in lump sums, amounts to the division for disbursement under the regulations which shall be made by the director with the approval of the Governor; however, the division, or its fiscal agent in behalf of the division, shall be authorized in maintaining separate accounts with a Mississippi bank to handle claim payments, refund recoveries and related Medicaid program financial transactions, to aggressively manage the float in these accounts while awaiting clearance of checks or electronic transfers and/or other disposition so as to accrue maximum interest advantage of the funds in the account, and to retain all earned interest on these funds to be applied to match federal funds for Medicaid program operations.

(2) The division is authorized to obtain a line of credit through the State Treasurer from the Working Cash-Stabilization Fund or any other special source funds maintained in the State Treasury in an amount not exceeding One Hundred Fifty Million Dollars ($150,000,000.00) to fund shortfalls which, from time to time, may occur due to decreases in state matching fund cash flow. The length of indebtedness under this provision shall not carry past the end of the quarter following the loan origination. Loan proceeds shall be received by the State Treasurer and shall be placed in a Medicaid designated special fund account. Loan proceeds shall be expended only for health care services provided under the Medicaid program. The division may pledge as security for such interim financing future funds that will be received by the division. Any such loans shall be repaid from the first available funds received by the division in the manner of and subject to the same terms provided in this section.

In the event the State Treasurer makes a determination that special source funds are not sufficient to cover a line of credit for the Division of Medicaid, the division is authorized to obtain a line of credit, in an amount not exceeding One Hundred Fifty Million Dollars ($150,000,000.00), from a commercial lender or a consortium of lenders. The length of indebtedness under this provision shall not carry past the end of the quarter following the loan origination. The division shall obtain a minimum of two (2) written quotes that shall be presented to the State Fiscal Officer and State Treasurer, who shall jointly select a lender. Loan proceeds shall be received by the State Treasurer and shall be placed in a Medicaid designated special fund account. Loan proceeds shall be expended only for health care services provided under the Medicaid program. The division may pledge as security for such interim financing future funds that will be received by the division. Any such loans shall be repaid from the first available funds received by the division in the manner of and subject to the same terms provided in this section.

(3) Disbursement of funds to providers shall be made as follows:

(a) All providers must submit all claims to the Division of Medicaid's fiscal agent no later than twelve (12) months from the date of service.

(b) The Division of Medicaid's fiscal agent must pay ninety percent (90%) of all clean claims within thirty (30) days of the date of receipt.

(c) The Division of Medicaid's fiscal agent must pay ninety-nine percent (99%) of all clean claims within ninety (90) days of the date of receipt.

(d) The Division of Medicaid's fiscal agent must pay all other claims within twelve (12) months of the date of receipt.

(e) If a claim is neither paid nor denied for valid and proper reasons by the end of the time periods as specified above, the Division of Medicaid's fiscal agent must pay the provider interest on the claim at the rate of one and one-half percent (1-½%) per month on the amount of such claim until it is finally settled or adjudicated.

(4) The date of receipt is the date the fiscal agent receives the claim as indicated by its date stamp on the claim or, for those claims filed electronically, the date of receipt is the date of transmission.

(5) The date of payment is the date of the check or, for those claims paid by electronic funds transfer, the date of the transfer.

(6) The above specified time limitations do not apply in the following circumstances:

(a) Retroactive adjustments paid to providers reimbursed under a retrospective payment system;

(b) If a claim for payment under Medicare has been filed in a timely manner, the fiscal agent may pay a Medicaid claim relating to the same services within six (6) months after it, or the provider, receives notice of the disposition of the Medicare claim;

(c) Claims from providers under investigation for fraud or abuse; and

(d) The Division of Medicaid and/or its fiscal agent may make payments at any time in accordance with a court order, to carry out hearing decisions or corrective actions taken to resolve a dispute, or to extend the benefits of a hearing decision, corrective action, or court order to others in the same situation as those directly affected by it.

(7) Repealed.

(8) If sufficient funds are appropriated therefor by the Legislature, the Division of Medicaid may contract with the Mississippi Dental Association, or an approved designee, to develop and operate a Donated Dental Services (DDS) program through which volunteer dentists will treat needy disabled, aged and medically-compromised individuals who are non-Medicaid eligible recipients.

SOURCES: Codes, 1942, § 7290-37; Laws, 1969, Ex Sess, ch. 37, § 7; Laws, 1984, ch. 488, § 45; Laws, 1985, ch. 372; Laws, 1993, ch. 477, § 1; Laws, 1995, ch. 614, § 1; Laws, 2000, ch. 301, § 5; Laws, 2003, ch. 543, § 1; Laws, 2004, ch. 303, § 3, eff from and after passage (approved Mar. 22, 2004.)

Editor's Note — Laws of 1984, ch. 488, § 43(2), provides as follows:

"SECTION 43(2). The State Auditor shall transfer all funds appropriated to the Mississippi Medicaid Commission to a separate account in the Treasury to be named 'Governor's Office-Division of Medicaid.' The Auditor shall issue his warrants upon requisitions signed by the proper person or officer designated by the Governor."

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Chapter 301 of Laws of 2000 was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Subsection (7), which required the Division of Medicaid to develop a contingency plan for reimbursement and eligibility verification to be used in the event that on January 1, 2000, the computers and computer programs used by the Division and its fiscal agent have not been sufficiently modified to deal with the issues that will result because of the year 2000, was repealed effective July 1, 2001, pursuant to its own terms.

Cross References — Working Cash-Stabilization Reserve Fund created, see § 27-103-203.

Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

Disclosure of records of disbursement and payment of welfare assistance, see § 43-1-19.

Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Federal Aspects — Medicare, see 42 USCS §§ 1395 et seq.

Medicaid, see 42 USCS §§ 1396 et seq.

JUDICIAL DECISIONS

1. In general.

To determine whether health care providers are entitled to bring private right of action under 42 USCS § 1983 to challenged adequacy of state's reimbursement rates for medical services provided under Medicaid program, court must look closely at precise statutory language, and examine what is required of state as a condition of receiving federal funds. Duties that are merely generalized are to be enforced by the Secretary, not by private individuals. The right must be unambiguously conferred by the statute. The two-prong test of Golden State Transit Corp. v. Los Angeles (1989) 493 U.S. 103, 107 L. Ed. 3d 420, 110 S. Ct. 444, still has force: (1) plaintiff must assert violation of a federal rights: the interest the plaintiff asserts must not be too vague and amorphous, and it must be examined whether the provision was intended to benefit the putative plaintiff. (2) Even when plaintiff shows a federal right, defendant may show that Congress specifically foreclosed a remedy under section 1983 by providing a comprehensive enforcement mechanism for protection of a federal right, the burden to demonstrate that Congress had expressly withdrawn such a remedy being on the defendant. Evelyn V. v. Kings County Hosp. Ctr., 819 F. Supp. 183 (E.D.N.Y. 1993).

Health care providers are entitled to sue under 42 USCS § 1983 to challenge adequacy of state's reimbursement rates for medical services provided under medicaid program. Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

§ 43-13-115. Persons entitled to receive Medicaid.

Recipients of Medicaid shall be the following persons only:

(1) Those who are qualified for public assistance grants under provisions of Title IV-A and E of the federal Social Security Act, as amended, including those statutorily deemed to be IV-A and low income families and children under Section 1931 of the federal Social Security Act. For the

purposes of this paragraph (1) and paragraphs (8), (17) and (18) of this section, any reference to Title IV-A or to Part A of Title IV of the federal Social Security Act, as amended, or the state plan under Title IV-A or Part A of Title IV, shall be considered as a reference to Title IV-A of the federal Social Security Act, as amended, and the state plan under Title IV-A, including the income and resource standards and methodologies under Title IV-A and the state plan, as they existed on July 16, 1996. The Department of Human Services shall determine Medicaid eligibility for children receiving public assistance grants under Title IV-E. The division shall determine eligibility for low income families under Section 1931 of the federal Social Security Act and shall redetermine eligibility for those continuing under Title IV-A grants.

(2) Those qualified for Supplemental Security Income (SSI) benefits under Title XVI of the federal Social Security Act, as amended, and those who are deemed SSI eligible as contained in federal statute. The eligibility of individuals covered in this paragraph shall be determined by the Social Security Administration and certified to the Division of Medicaid.

(3) Qualified pregnant women who would be eligible for Medicaid as a low income family member under Section 1931 of the federal Social Security Act if her child were born. The eligibility of the individuals covered under this paragraph shall be determined by the division.

(4) [Deleted]

(5) A child born on or after October 1, 1984, to a woman eligible for and receiving Medicaid under the state plan on the date of the child's birth shall be deemed to have applied for Medicaid and to have been found eligible for Medicaid under the plan on the date of that birth, and will remain eligible for Medicaid for a period of one (1) year so long as the child is a member of the woman's household and the woman remains eligible for Medicaid or would be eligible for Medicaid if pregnant. The eligibility of individuals covered in this paragraph shall be determined by the Division of Medicaid.

(6) Children certified by the State Department of Human Services to the Division of Medicaid of whom the state and county departments of human services have custody and financial responsibility, and children who are in adoptions subsidized in full or part by the Department of Human Services, including special needs children in non-Title IV-E adoption assistance, who are approvable under Title XIX of the Medicaid program. The eligibility of the children covered under this paragraph shall be determined by the State Department of Human Services.

(7) Persons certified by the Division of Medicaid who are patients in a medical facility (nursing home, hospital, tuberculosis sanatorium or institution for treatment of mental diseases), and who, except for the fact that they are patients in that medical facility, would qualify for grants under Title IV, Supplementary Security Income (SSI) benefits under Title XVI or state supplements, and those aged, blind and disabled persons who would not be eligible for Supplemental Security Income (SSI) benefits under Title XVI or state supplements if they were not institutionalized in a medical facility but

whose income is below the maximum standard set by the Division of Medicaid, which standard shall not exceed that prescribed by federal regulation.

(8) Children under eighteen (18) years of age and pregnant women (including those in intact families) who meet the financial standards of the state plan approved under Title IV-A of the federal Social Security Act, as amended. The eligibility of children covered under this paragraph shall be determined by the Division of Medicaid.

(9) Individuals who are:

(a) Children born after September 30, 1983, who have not attained the age of nineteen (19), with family income that does not exceed one hundred percent (100%) of the nonfarm official poverty level;

(b) Pregnant women, infants and children who have not attained the age of six (6), with family income that does not exceed one hundred thirty-three percent (133%) of the federal poverty level; and

(c) Pregnant women and infants who have not attained the age of one (1), with family income that does not exceed one hundred eighty-five percent (185%) of the federal poverty level.

The eligibility of individuals covered in (a), (b) and (c) of this paragraph shall be determined by the division.

(10) Certain disabled children age eighteen (18) or under who are living at home, who would be eligible, if in a medical institution, for SSI or a state supplemental payment under Title XVI of the federal Social Security Act, as amended, and therefore for Medicaid under the plan, and for whom the state has made a determination as required under Section 1902(e)(3)(b) of the federal Social Security Act, as amended. The eligibility of individuals under this paragraph shall be determined by the Division of Medicaid.

(11) Until the end of the day on December 31, 2005, individuals who are sixty-five (65) years of age or older or are disabled as determined under Section 1614(a)(3) of the federal Social Security Act, as amended, and whose income does not exceed one hundred thirty-five percent (135%) of the nonfarm official poverty level as defined by the Office of Management and Budget and revised annually, and whose resources do not exceed those established by the Division of Medicaid. The eligibility of individuals covered under this paragraph shall be determined by the Division of Medicaid. After December 31, 2005, only those individuals covered under the 1115(c) Healthier Mississippi waiver will be covered under this category.

Any individual who applied for Medicaid during the period from July 1, 2004, through March 31, 2005, who otherwise would have been eligible for coverage under this paragraph (11) if it had been in effect at the time the individual submitted his or her application and is still eligible for coverage under this paragraph (11) on March 31, 2005, shall be eligible for Medicaid coverage under this paragraph (11) from March 31, 2005, through December 31, 2005. The division shall give priority in processing the applications for those individuals to determine their eligibility under this paragraph (11).

(12) Individuals who are qualified Medicare beneficiaries (QMB) entitled to Part A Medicare as defined under Section 301, Public Law 100-360,

known as the Medicare Catastrophic Coverage Act of 1988, and whose income does not exceed one hundred percent (100%) of the nonfarm official poverty level as defined by the Office of Management and Budget and revised annually.

The eligibility of individuals covered under this paragraph shall be determined by the Division of Medicaid, and those individuals determined eligible shall receive Medicare cost-sharing expenses only as more fully defined by the Medicare Catastrophic Coverage Act of 1988 and the Balanced Budget Act of 1997.

(13)(a) Individuals who are entitled to Medicare Part A as defined in Section 4501 of the Omnibus Budget Reconciliation Act of 1990, and whose income does not exceed one hundred twenty percent (120%) of the nonfarm official poverty level as defined by the Office of Management and Budget and revised annually. Eligibility for Medicaid benefits is limited to full payment of Medicare Part B premiums.

(b) Individuals entitled to Part A of Medicare, with income above one hundred twenty percent (120%), but less than one hundred thirty-five percent (135%) of the federal poverty level, and not otherwise eligible for Medicaid. Eligibility for Medicaid benefits is limited to full payment of Medicare Part B premiums. The number of eligible individuals is limited by the availability of the federal capped allocation at one hundred percent (100%) of federal matching funds, as more fully defined in the Balanced Budget Act of 1997.

The eligibility of individuals covered under this paragraph shall be determined by the Division of Medicaid.

(14) [Deleted]

(15) Disabled workers who are eligible to enroll in Part A Medicare as required by Public Law 101-239, known as the Omnibus Budget Reconciliation Act of 1989, and whose income does not exceed two hundred percent (200%) of the federal poverty level as determined in accordance with the Supplemental Security Income (SSI) program. The eligibility of individuals covered under this paragraph shall be determined by the Division of Medicaid and those individuals shall be entitled to buy-in coverage of Medicare Part A premiums only under the provisions of this paragraph (15).

(16) In accordance with the terms and conditions of approved Title XIX waiver from the United States Department of Health and Human Services, persons provided home- and community-based services who are physically disabled and certified by the Division of Medicaid as eligible due to applying the income and deeming requirements as if they were institutionalized.

(17) In accordance with the terms of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), persons who become ineligible for assistance under Title IV-A of the federal Social Security Act, as amended, because of increased income from or hours of employment of the caretaker relative or because of the expiration of the applicable earned income disregards, who were eligible for Medicaid for at least three (3) of the six (6) months preceding the month in which the

ineligibility begins, shall be eligible for Medicaid for up to twelve (12) months. The eligibility of the individuals covered under this paragraph shall be determined by the division.

(18) Persons who become ineligible for assistance under Title IV-A of the federal Social Security Act, as amended, as a result, in whole or in part, of the collection or increased collection of child or spousal support under Title IV-D of the federal Social Security Act, as amended, who were eligible for Medicaid for at least three (3) of the six (6) months immediately preceding the month in which the ineligibility begins, shall be eligible for Medicaid for an additional four (4) months beginning with the month in which the ineligibility begins. The eligibility of the individuals covered under this paragraph shall be determined by the division.

(19) Disabled workers, whose incomes are above the Medicaid eligibility limits, but below two hundred fifty percent (250%) of the federal poverty level, shall be allowed to purchase Medicaid coverage on a sliding fee scale developed by the Division of Medicaid.

(20) Medicaid eligible children under age eighteen (18) shall remain eligible for Medicaid benefits until the end of a period of twelve (12) months following an eligibility determination, or until such time that the individual exceeds age eighteen (18).

(21) Women of childbearing age whose family income does not exceed one hundred eighty-five percent (185%) of the federal poverty level. The eligibility of individuals covered under this paragraph (21) shall be determined by the Division of Medicaid, and those individuals determined eligible shall only receive family planning services covered under Section 43-13-117(13) and not any other services covered under Medicaid. However, any individual eligible under this paragraph (21) who is also eligible under any other provision of this section shall receive the benefits to which he or she is entitled under that other provision, in addition to family planning services covered under Section 43-13-117(13).

The Division of Medicaid shall apply to the United States Secretary of Health and Human Services for a federal waiver of the applicable provisions of Title XIX of the federal Social Security Act, as amended, and any other applicable provisions of federal law as necessary to allow for the implementation of this paragraph (21). The provisions of this paragraph (21) shall be implemented from and after the date that the Division of Medicaid receives the federal waiver.

(22) Persons who are workers with a potentially severe disability, as determined by the division, shall be allowed to purchase Medicaid coverage. The term "worker with a potentially severe disability" means a person who is at least sixteen (16) years of age but under sixty-five (65) years of age, who has a physical or mental impairment that is reasonably expected to cause the person to become blind or disabled as defined under Section 1614(a) of the federal Social Security Act, as amended, if the person does not receive items and services provided under Medicaid.

The eligibility of persons under this paragraph (22) shall be conducted as a demonstration project that is consistent with Section 204 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170, for a certain number of persons as specified by the division. The eligibility of individuals covered under this paragraph (22) shall be determined by the Division of Medicaid.

(23) Children certified by the Mississippi Department of Human Services for whom the state and county departments of human services have custody and financial responsibility who are in foster care on their eighteenth birthday as reported by the Mississippi Department of Human Services shall be certified Medicaid eligible by the Division of Medicaid until their twenty-first birthday.

(24) Individuals who have not attained age sixty-five (65), are not otherwise covered by creditable coverage as defined in the Public Health Services Act, and have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act in accordance with the requirements of that act and who need treatment for breast or cervical cancer. Eligibility of individuals under this paragraph (24) shall be determined by the Division of Medicaid.

(25) The division shall apply to the Centers for Medicare and Medicaid Services (CMS) for any necessary waivers to provide services to individuals who are sixty-five (65) years of age or older or are disabled as determined under Section 1614(a)(3) of the federal Social Security Act, as amended, and whose income does not exceed one hundred thirty-five percent (135%) of the nonfarm official poverty level as defined by the Office of Management and Budget and revised annually, and whose resources do not exceed those established by the Division of Medicaid, and who are not otherwise covered by Medicare. Nothing contained in this paragraph (25) shall entitle an individual to benefits. The eligibility of individuals covered under this paragraph shall be determined by the Division of Medicaid.

(26) The division shall apply to the Centers for Medicare and Medicaid Services (CMS) for any necessary waivers to provide services to individuals who are sixty-five (65) years of age or older or are disabled as determined under Section 1614(a)(3) of the federal Social Security Act, as amended, who are end stage renal disease patients on dialysis, cancer patients on chemotherapy or organ transplant recipients on anti-rejection drugs, whose income does not exceed one hundred thirty-five percent (135%) of the nonfarm official poverty level as defined by the Office of Management and Budget and revised annually, and whose resources do not exceed those established by the division. Nothing contained in this paragraph (26) shall entitle an individual to benefits. The eligibility of individuals covered under this paragraph shall be determined by the Division of Medicaid.

(27) Individuals who are entitled to Medicare Part D and whose income does not exceed one hundred fifty percent (150%) of the nonfarm official poverty level as defined by the Office of Management and Budget and revised annually. Eligibility for payment of the Medicare Part D subsidy under this paragraph shall be determined by the division.

The division shall redetermine eligibility for all categories of recipients described in each paragraph of this section not less frequently than required by federal law.

SOURCES: Codes, 1942, § 7290-38; Laws, 1969, Ex Sess, ch. 37, § 8; Laws, 1976, ch. 317, § 1; Laws, 1978, ch. 489, § 1; Laws, 1979, ch. 495, § 1; Laws, 1980, ch. 508, § 1; Laws, 1981, ch. 451, § 1; Laws, 1982, ch. 483, § 1; Laws, 1983, ch. 421; reenacted, 1984, ch. 431; Laws, 1984, ch. 488, § 46; Laws, 1985, ch. 353; Laws, 1987, ch. 513, § 1; Laws, 1988, ch. 582; Laws, 1989, ch. 527, § 4; Laws, 1990, ch. 548, § 1; Laws, 1991, ch. 579, § 1; Laws, 1992, ch. 487, § 1; Laws, 1993, ch. 609, § 1; Laws, 1993, ch. 614, § 9; Laws, 1994, ch. 649, § 1; Laws, 1997, ch. 316, § 23; Laws, 1999, ch. 477, § 1; Laws, 2000, ch. 301, § 6; Laws, 2000, ch. 438, § 1; Laws, 2000, ch. 460, § 1; Laws, 2001, ch. 593, § 1; Laws, 2001, ch. 594, § 1; Laws, 2003, ch. 543, § 2; Laws, 2004, ch. 593, § 2; Laws, 2005, ch. 470, § 1, eff from and after passage (approved Mar. 31, 2005.)

Joint Legislative Committee Note — Section 6 of ch. 301, Laws of 2000, effective from and after July 1, 1999, amended this section. Section 1 of ch. 438, Laws of 2000, effective from and after July 1, 2000, amended this section. Section 1 of ch. 460, Laws of 2000, effective from and after July 1, 2000, also amended this section. As set out above, this section reflects the language of all three amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the Legislative intent at the June 29, 2000, meeting of the Committee.

Section 1 of ch. 593, Laws of 2001, effective from and after July 1, 2001, amended this section. Section 1 of ch. 594, Laws of 2001, effective from and after July 1, 2001, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 594, Laws of 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (b) of subsection (13) by adding a period between the words "Medicaid" and "Eligibility" so that "(b) Individuals entitled to Part A of Medicare...but not otherwise eligible for Medicaid Eligibility for Medicaid benefits is limited to..." reads "(b) Individuals entitled to Part A of Medicare...but not otherwise eligible for Medicaid. Eligibility for Medicaid benefits is limited to..." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

Laws of 2000, ch. 301, was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Cross References — Medical assistance eligibility determinations by department of human services, see § 37-33-167.

School nurse intervention program, §§ 41-79-1 et seq.

Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

Medicaid eligibility determinations made by other agencies and certified to Division of Medicaid, pursuant to this section, not subject to administrative hearing procedures, see § 43-13-116.

Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Provision of the Mississippi Vulnerable Persons Act to effect that a court shall not order the Division of Medicaid to provide custody, care, or maintenance of a vulnerable person who is not otherwise eligible for medical assistance under this section or services under § 43-13-117, see § 43-47-21.

Money benefits payable under adoption supplemental benefits law, see § 93-17-61.

Federal Aspects — Title IV-A and E of the Federal Social Security Act, see 42 USCS §§ 601 et seq. and §§ 670 et seq.

Title IV-D of the Social Security Act appears as 42 USCS §§ 651 et seq.

Title XVI of the Federal Social Security Act, see 42 USCS §§ 1381 et seq.

Section 1614 of the Social Security Act appears generally as 42 USCS § 1382c.

Medicare Catastrophic Coverage Act of 1988, Public Law 100-360, is codified in various sections of 42 USCS §§ 1395 et seq.

Section 4501 of the Omnibus Budget Reconciliation Act of 1990 (PL 101-508) is classified principally to 42 USCS §§ 1395b, 1395v, 1396a and 1396d.

Title XIX of the Federal Social Security Act, see 42 USCS §§ 1396 et seq.

Section 1905(n) of the Federal Social Security Act, see 42 USCS § 1396d.

Section 1931 of the Social Security Act appears as 42 USCS § 1396u-1.

JUDICIAL DECISIONS

1. In general.

Congress intended to require, and did require, that Mississippi make available Medicaid benefits to all recipients of supplemental security income disability payments under the age of 18 who, except for the fact that they are receiving SSI payments, would qualify for Aid to Families with Dependent Children benefits under the AFDC standards in effect in Mississippi on January 1, 1972. West v. Cole, 390 F. Supp. 91 (N.D. Miss. 1975).

Section 1402(b) of the Social Security Act of 1935, as amended (42 USCS § 1352(b)), which provides that the secretary of health, education, and welfare shall approve any state plan for the distribution of funds under federally assisted disability welfare programs except, among others, plans which impose citizenship requirements which exclude any citizen of the United States, does not authorize a state statutory provision denying general disability assistance to resident aliens who have not resided within the United States for a total of at least 15 years. Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

Relatives with whom dependent child is living are entitled to benefits under this section [Code 1942, § 7290-38], including reimbursement for medical expenses incurred due to the denial of these benefits to said relatives. Triplett v. Cobb, 331 F. Supp. 652 (N.D. Miss. 1971).

Welfare mothers and other caretaker relatives, whose needs were considered in the determination of AFDC grants, were qualified for AFDC payments, and the State of Mississippi could not limit eligibility for its medicaid program to children, excluding from aid parents and caretaker relatives. Triplett v. Cobb, 331 F. Supp. 652 (N.D. Miss. 1971).

RESEARCH REFERENCES

ALR. Infant's liability for medical, dental, or hospital services. 53 A.L.R.4th 1249.

§ 43-13-115.1. Repealed.

Repealed by Laws, 2003, ch. 543, § 7, eff from and after passage (approved April 21, 2003.)

[Laws, 2001, ch. 532, § 11, eff from and after June 30, 2001.]

Editor's Note — Former § 43-13-115.1 provided presumptive eligibility for certain participants in the Medicaid program.

§ 43-13-116. Authority to determine Medicaid eligibility; agreements with state and federal agencies; administrative hearings; authority to hire employees.

(1) It shall be the duty of the Division of Medicaid to fully implement and carry out the administrative functions of determining the eligibility of those persons who qualify for medical assistance under Section 43-13-115.

(2) In determining Medicaid eligibility, the Division of Medicaid is authorized to enter into an agreement with the Secretary of the Department of Health and Human Services for the purpose of securing the transfer of eligibility information from the Social Security Administration on those individuals receiving supplemental security income benefits under the federal Social Security Act and any other information necessary in determining Medicaid eligibility. The Division of Medicaid is further empowered to enter into contractual arrangements with its fiscal agent or with the State Department of Human Services in securing electronic data processing support as may be necessary.

(3) Administrative hearings shall be available to any applicant who requests it because his or her claim of eligibility for services is denied or is not acted upon with reasonable promptness or by any recipient who requests it because he or she believes the agency has erroneously taken action to deny, reduce, or terminate benefits. The agency need not grant a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients. Eligibility determinations that are made by other agencies and certified to the Division of Medicaid pursuant to Section 43-13-115 are not subject to the administrative hearing procedures of the Division of Medicaid but are subject to the administrative hearing procedures of the agency that determined eligibility.

(a) A request may be made either for a local regional office hearing or a state office hearing when the local regional office has made the initial decision that the claimant seeks to appeal or when the regional office has not acted with reasonable promptness in making a decision on a claim for eligibility or services. The only exception to requesting a local hearing is when the issue under appeal involves either (i) a disability or blindness denial, or termination, or (ii) a level of care denial or termination for a disabled child living at home. An appeal involving disability, blindness or level of care must be handled as a state level hearing. The decision from the local hearing may be appealed to the state office for a state hearing. A decision to deny, reduce or terminate benefits that is initially made at the state office may be appealed by requesting a state hearing.

(b) A request for a hearing, either state or local, must be made in writing by the claimant or claimant's legal representative. "Legal representative" includes the claimant's authorized representative, an attorney retained by the claimant or claimant's family to represent the claimant, a paralegal representative with a legal aid services, a parent of a minor child if the claimant is a child, a legal guardian or conservator or an individual with power of attorney for the claimant. The claimant may also be represented by anyone that he or she so designates but must give the designation to the Medicaid regional office or state office in writing, if the person is not the legal representative, legal guardian, or authorized representative.

(c) The claimant may make a request for a hearing in person at the regional office but an oral request must be put into written form. Regional office staff will determine from the claimant if a local or state hearing is requested and assist the claimant in completing and signing the appropriate form. Regional office staff may forward a state hearing request to the appropriate division in the state office or the claimant may mail the form to the address listed on the form. The claimant may make a written request for a hearing by letter. A simple statement requesting a hearing that is signed by the claimant or legal representative is sufficient; however, if possible, the claimant should state the reason for the request. The letter may be mailed to the regional office or it may be mailed to the state office. If the letter does not specify the type of hearing desired, local or state, Medicaid staff will attempt to contact the claimant to determine the level of hearing desired. If contact cannot be made within three (3) days of receipt of the request, the request will be assumed to be for a local hearing and scheduled accordingly. A hearing will not be scheduled until either a letter or the appropriate form is received by the regional or state office.

(d) When both members of a couple wish to appeal an action or inaction by the agency that affects both applications or cases similarly and arose from the same issue, one or both may file the request for hearing, both may present evidence at the hearing, and the agency's decision will be applicable to both. If both file a request for hearing, two (2) hearings will be registered but they will be conducted on the same day and in the same place, either consecutively or jointly, as the couple wishes. If they so desire, only one of the couple need attend the hearing.

(e) The procedure for administrative hearings shall be as follows:

(i) The claimant has thirty (30) days from the date the agency mails the appropriate notice to the claimant of its decision regarding eligibility, services, or benefits to request either a state or local hearing. This time period may be extended if the claimant can show good cause for not filing within thirty (30) days. Good cause includes, but may not be limited to, illness, failure to receive the notice, being out of state, or some other reasonable explanation. If good cause can be shown, a late request may be accepted provided the facts in the case remain the same. If a claimant's circumstances have changed or if good cause for filing a request beyond thirty (30) days is not shown, a hearing request will not be accepted. If the claimant wishes to have eligibility reconsidered, he or she may reapply.

(ii) If a claimant or representative requests a hearing in writing during the advance notice period before benefits are reduced or terminated, benefits must be continued or reinstated to the benefit level in effect before the effective date of the adverse action. Benefits will continue at the original level until the final hearing decision is rendered. Any hearing requested after the advance notice period will not be accepted as a timely request in order for continuation of benefits to apply.

(iii) Upon receipt of a written request for a hearing, the request will be acknowledged in writing within twenty (20) days and a hearing scheduled. The claimant or representative will be given at least five (5) days' advance notice of the hearing date. The local and/or state level hearings will be held by telephone unless, at the hearing officer's discretion, it is determined that an in-person hearing is necessary. If a local hearing is requested, the regional office will notify the claimant or representative in writing of the time of the local hearing. If a state hearing is requested, the state office will notify the claimant or representative in writing of the time of the state hearing. If an in-person hearing is necessary, local hearings will be held at the regional office and state hearings will be held at the state office unless other arrangements are necessitated by the claimant's inability to travel.

(iv) All persons attending a hearing will attend for the purpose of giving information on behalf of the claimant or rendering the claimant assistance in some other way, or for the purpose of representing the Division of Medicaid.

(v) A state or local hearing request may be withdrawn at any time before the scheduled hearing, or after the hearing is held but before a decision is rendered. The withdrawal must be in writing and signed by the claimant or representative. A hearing request will be considered abandoned if the claimant or representative fails to appear at a scheduled hearing without good cause. If no one appears for a hearing, the appropriate office will notify the claimant in writing that the hearing is dismissed unless good cause is shown for not attending. The proposed agency action will be taken on the case following failure to appear for a hearing if the action has not already been effected.

(vi) The claimant or his representative has the following rights in connection with a local or state hearing:

(A) The right to examine at a reasonable time before the date of the hearing and during the hearing the content of the claimant's case record;

(B) The right to have legal representation at the hearing and to bring witnesses;

(C) The right to produce documentary evidence and establish all facts and circumstances concerning eligibility, services, or benefits;

(D) The right to present an argument without undue interference;

(E) The right to question or refute any testimony or evidence including an opportunity to confront and cross-examine adverse witnesses.

(vii) When a request for a local hearing is received by the regional office or if the regional office is notified by the state office that a local hearing has been requested, the Medicaid specialist supervisor in the regional office will review the case record, reexamine the action taken on the case, and determine if policy and procedures have been followed. If any adjustments or corrections should be made, the Medicaid specialist supervisor will ensure that corrective action is taken. If the request for hearing was timely made such that continuation of benefits applies, the Medicaid specialist supervisor will ensure that benefits continue at the level before the proposed adverse action that is the subject of the appeal. The Medicaid specialist supervisor will also ensure that all needed information, verification, and evidence is in the case record for the hearing.

(viii) When a state hearing is requested that appeals the action or inaction of a regional office, the regional office will prepare copies of the case record and forward it to the appropriate division in the state office no later than five (5) days after receipt of the request for a state hearing. The original case record will remain in the regional office. Either the original case record in the regional office or the copy forwarded to the state office will be available for inspection by the claimant or claimant's representative a reasonable time before the date of the hearing.

(ix) The Medicaid specialist supervisor will serve as the hearing officer for a local hearing unless the Medicaid specialist supervisor actually participated in the eligibility, benefits, or services decision under appeal, in which case the Medicaid specialist supervisor must appoint a Medicaid specialist in the regional office who did not actually participate in the decision under appeal to serve as hearing officer. The local hearing will be an informal proceeding in which the claimant or representative may present new or additional information, may question the action taken on the client's case, and will hear an explanation from agency staff as to the regulations and requirements that were applied to claimant's case in making the decision.

(x) After the hearing, the hearing officer will prepare a written summary of the hearing procedure and file it with the case record. The hearing officer will consider the facts presented at the local hearing in reaching a decision. The claimant will be notified of the local hearing decision on the appropriate form that will state clearly the reason for the decision, the policy that governs the decision, the claimant's right to appeal the decision to the state office, and, if the original adverse action is upheld, the new effective date of the reduction or termination of benefits or services if continuation of benefits applied during the hearing process. The new effective date of the reduction or termination of benefits or services must be at the end of the fifteen-day advance notice period from the mailing date of the notice of hearing decision. The notice to claimant will be made part of the case record.

(xi) The claimant has the right to appeal a local hearing decision by requesting a state hearing in writing within fifteen (15) days of the mailing date of the notice of local hearing decision. The state hearing request should be made to the regional office. If benefits have been continued pending the local hearing process, then benefits will continue throughout the fifteen-day advance notice period for an adverse local hearing decision. If a state hearing is timely requested within the fifteen-day period, then benefits will continue pending the state hearing process. State hearings requested after the fifteen-day local hearing advance notice period will not be accepted unless the initial thirty-day period for filing a hearing request has not expired because the local hearing was held early, in which case a state hearing request will be accepted as timely within the number of days remaining of the unexpired initial thirty-day period in addition to the fifteen-day time period. Continuation of benefits during the state hearing process, however, will only apply if the state hearing request is received within the fifteen-day advance notice period.

(xii) When a request for a state hearing is received in the regional office, the request will be made part of the case record and the regional office will prepare the case record and forward it to the appropriate division in the state office within five (5) days of receipt of the state hearing request. A request for a state hearing received in the state office will be forwarded to the regional office for inclusion in the case record and the regional office will prepare the case record and forward it to the appropriate division in the state office within five (5) days of receipt of the state hearing request.

(xiii) Upon receipt of the hearing record, an impartial hearing officer will be assigned to hear the case either by the Executive Director of the Division of Medicaid or his or her designee. Hearing officers will be individuals with appropriate expertise employed by the division and who have not been involved in any way with the action or decision on appeal in the case. The hearing officer will review the case record and if the review shows that an error was made in the action of the agency or in the interpretation of policy, or that a change of policy has been made, the hearing officer will discuss these matters with the appropriate agency personnel and request that an appropriate adjustment be made. Appropriate agency personnel will discuss the matter with the claimant and if the claimant is agreeable to the adjustment of the claim, then agency personnel will request in writing dismissal of the hearing and the reason therefor, to be placed in the case record. If the hearing is to go forward, it shall be scheduled by the hearing officer in the manner set forth in subparagraph (iii) of this paragraph (e).

(xiv) In conducting the hearing, the state hearing officer will inform those present of the following:

(A) That the hearing will be recorded on tape and that a transcript of the proceedings will be typed for the record;

(B) The action taken by the agency which prompted the appeal;

(C) An explanation of the claimant's rights during the hearing as outlined in subparagraph (vi) of this paragraph (e);

(D) That the purpose of the hearing is for the claimant to express dissatisfaction and present additional information or evidence;

(E) That the case record is available for review by the claimant or representative during the hearing;

(F) That the final hearing decision will be rendered by the Executive Director of the Division of Medicaid on the basis of facts presented at the hearing and the case record and that the claimant will be notified by letter of the final decision.

(xv) During the hearing, the claimant and/or representative will be allowed an opportunity to make a full statement concerning the appeal and will be assisted, if necessary, in disclosing all information on which the claim is based. All persons representing the claimant and those representing the Division of Medicaid will have the opportunity to state all facts pertinent to the appeal. The hearing officer may recess or continue the hearing for a reasonable time should additional information or facts be required or if some change in the claimant's circumstances occurs during the hearing process which impacts the appeal. When all information has been presented, the hearing officer will close the hearing and stop the recorder.

(xvi) Immediately following the hearing the hearing tape will be transcribed and a copy of the transcription forwarded to the regional office for filing in the case record. As soon as possible, the hearing officer shall review the evidence and record of the proceedings, testimony, exhibits, and other supporting documents, prepare a written summary of the facts as the hearing officer finds them, and prepare a written recommendation of action to be taken by the agency, citing appropriate policy and regulations that govern the recommendation. The decision cannot be based on any material, oral or written, not available to the claimant before or during the hearing. The hearing officer's recommendation will become part of the case record which will be submitted to the Executive Director of the Division of Medicaid for further review and decision.

(xvii) The Executive Director of the Division of Medicaid, upon review of the recommendation, proceedings and the record, may sustain the recommendation of the hearing officer, reject the same, or remand the matter to the hearing officer to take additional testimony and evidence, in which case, the hearing officer thereafter shall submit to the executive director a new recommendation. The executive director shall prepare a written decision summarizing the facts and identifying policies and regulations that support the decision, which shall be mailed to the claimant and the representative, with a copy to the regional office if appropriate, as soon as possible after submission of a recommendation by the hearing officer. The decision notice will specify any action to be taken by the agency, specify any revised eligibility dates or, if continuation of benefits applies, will notify the claimant of the new effective date of reduction or termination of benefits or services, which will be fifteen (15) days from the mailing date of the notice of decision. The decision rendered by the Executive Director of the Division of Medicaid is final and binding. The claimant is entitled to seek judicial review in a court of proper jurisdiction.

(xviii) The Division of Medicaid must take final administrative action on a hearing, whether state or local, within ninety (90) days from the date of the initial request for a hearing.

(xix) A group hearing may be held for a number of claimants under the following circumstances:

(A) The Division of Medicaid may consolidate the cases and conduct a single group hearing when the only issue involved is one (1) of a single law or agency policy;

(B) The claimants may request a group hearing when there is one (1) issue of agency policy common to all of them.

In all group hearings, whether initiated by the Division of Medicaid or by the claimants, the policies governing fair hearings must be followed. Each claimant in a group hearing must be permitted to present his or her own case and be represented by his or her own representative, or to withdraw from the group hearing and have his or her appeal heard individually. As in individual hearings, the hearing will be conducted only on the issue being appealed, and each claimant will be expected to keep individual testimony within a reasonable time frame as a matter of consideration to the other claimants involved.

(xx) Any specific matter necessitating an administrative hearing not otherwise provided under this article or agency policy shall be afforded under the hearing procedures as outlined above. If the specific time frames of such a unique matter relating to requesting, granting, and concluding of the hearing is contrary to the time frames as set out in the hearing procedures above, the specific time frames will govern over the time frames as set out within these procedures.

(4) The Executive Director of the Division of Medicaid, with the approval of the Governor, shall be authorized to employ eligibility, technical, clerical and supportive staff as may be required in carrying out and fully implementing the determination of Medicaid eligibility, including conducting quality control reviews and the investigation of the improper receipt of medical assistance. Staffing needs will be set forth in the annual appropriation act for the division. Additional office space as needed in performing eligibility, quality control and investigative functions shall be obtained by the division.

SOURCES: Laws, 1980, ch 508, § 2; Laws, 1981, ch. 353, § 1; Laws, 1984, ch. 488, § 47; Laws, 1993, ch. 609, § 2; Laws, 2000, ch. 301, § 7, eff from and after July 1, 1999.

Editor's Note — Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Chapter 301 of Laws of 2000 was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Cross References — Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Federal Aspects — Medicaid, see 42 USCS §§ 1396 et seq.

§ 43-13-116.1. Asset verification program; data match system with financial institutions; authority of division to request and financial institution to provide additional financial information as needed to verify eligibility.

(1) For purposes of this section:

(a) "Financial institution" has the meaning given by Sections 81-3-1 and 81-12-3, and shall include, but not be limited to, credit unions, stock brokerages, public or private entities administering retirement, savings, annuities, life insurance and/or pension funds.

(b) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account or money-market account.

(2) In accordance with Section 1940 of the federal Social Security Act (42 USCS Section 1396w), the Division of Medicaid shall implement an asset verification program requiring each applicant for or recipient of Medicaid assistance on the basis of being aged, blind or disabled, to provide authorization by the applicant or recipient, their spouse, and by any other person whose resources are required by law to be disclosed to determine the eligibility of the applicant or recipient for Medicaid assistance, for the division to obtain from any financial institution financial records and information held by any such financial institution with respect to the applicant, recipient, spouse or such other person, as applicable, that the division determines are needed to verify the financial resources of the applicant, recipient or such other person in connection with a determination or redetermination with respect to eligibility for, or the amount or extent of, Medicaid assistance. Each aged, blind or disabled Medicaid applicant or recipient, their spouse, and any other applicable person described in this section shall provide authorization (as specified by 42 USCS Section 1396w(c)) to the division to obtain from any financial institution, any financial record, whenever the division determines that the

record is needed in connection with a determination or redetermination of eligibility for Medicaid assistance.

(3)(a) In connection with the asset verification program, the division is authorized to enter into agreements with financial institutions doing business in the state:

(i) To develop and operate a data match system, using automated data exchanges, in which the division will provide to the financial institution, on a quarterly or more frequent basis, the name, social security number or other taxpayer identification number, and any other necessary identifying information for each applicant for or recipient of Medicaid assistance and for each other person whose resources are required to be disclosed to determine the eligibility of the applicant or recipient for Medicaid assistance; and

(ii) Provide for payment to the financial institution of the reasonable costs of the institution for conducting the data matches and for responding to other requests made under this section, in accordance with the cost reimbursement requirements of Section 1115(a) of the Federal Right to Financial Privacy Act, 12 USCS Section 3415, as amended.

(b) Any financial institution doing business in the State of Mississippi may enter into agreements with the division to engage in the data match system and also to disclose any accounts held by the institution on behalf of the persons so identified by the division and, if requested by the division, the account numbers, account balances, and all names and addresses and social security or other tax identification numbers on record for those accounts.

(4) When the operation of the data match system results in the location of an account of an applicant for or recipient of Medicaid assistance or a person whose resources are required to be disclosed to determine the eligibility of the applicant or recipient for Medicaid assistance, the division may request and the financial institution may provide any additional financial records and information held by the financial institution as the division determines are needed to establish, continue, modify or terminate eligibility for Medicaid assistance.

(5) A financial institution:

(a) Shall have no liability for failing to disclose to any account holder or depositor that the name of the person has been received from the division or that the financial institution has furnished financial records or information pertaining to the account holder or depositor to the division under this section;

(b) Shall have no liability for any delays, errors or omissions in conducting the data matches or in responding to other requests for records or information made under this section, which delays, errors or omissions result from circumstances beyond the control of the institution or from any unintentional, bona fide error, including, but not limited to, clerical or computer malfunction or programming error; and

(c) Shall be absolutely immune from any civil or criminal liability to any person under any contract, common law, statute or regulation for the disclosure to the division, or to any authorized contractor or agents thereof, of any information, accounts, assets, financial records or information under this article, the agreements referred to in subsection (4) of this section, or in response to any notice or request issued by the division or by any authorized contractors or agents thereof, or for any action or omission taken or omitted in good faith to comply with the requirements of this article.

SOURCES: Laws, 2012, ch. 434, § 1, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 434, § 3, provides:
"SECTION 3. Not later than December 31, 2013, the Division of Medicaid shall report to the Legislature the financial institution participation rate in the data match system established under this act, the amount of the savings achieved by the division through the asset verification program established under this act, and all expenditures by the division in relation to the program, including reimbursement to financial institutions and payments to vendors, contractors and consultants associated with the program."

§ 43-13-117. Types of care and services for which financial assistance furnished [Paragraph (A)(10) repealed effective July 1, 2016; Section repealed effective June 30, 2018].

(A) Medicaid as authorized by this article shall include payment of part or all of the costs, at the discretion of the division, with approval of the Governor, of the following types of care and services rendered to eligible applicants who have been determined to be eligible for that care and services, within the limits of state appropriations and federal matching funds:

(1) Inpatient hospital services.

(a) The division shall allow thirty (30) days of inpatient hospital care annually for all Medicaid recipients. Medicaid recipients requiring transplants shall not have those days included in the transplant hospital stay count against the thirty-day limit for inpatient hospital care. Precertification of inpatient days must be obtained as required by the division.

(b) From and after July 1, 1994, the Executive Director of the Division of Medicaid shall amend the Mississippi Title XIX Inpatient Hospital Reimbursement Plan to remove the occupancy rate penalty from the calculation of the Medicaid Capital Cost Component utilized to determine total hospital costs allocated to the Medicaid program.

(c) Hospitals will receive an additional payment for the implantable programmable baclofen drug pump used to treat spasticity that is implanted on an inpatient basis. The payment pursuant to written invoice will be in addition to the facility's per diem reimbursement and will represent a reduction of costs on the facility's annual cost report, and shall not exceed Ten Thousand Dollars ($10,000.00) per year per recipient.

(d) The division is authorized to implement an All-Patient Refined-Diagnosis Related Groups (APR-DRG) reimbursement methodology for inpatient hospital services.

(e) No service benefits or reimbursement limitations in this section shall apply to payments under an APR-DRG or Ambulatory Payment Classification (APC) model or a managed care program or similar model described in subsection (H) of this section.

(2) Outpatient hospital services.

(a) Emergency services.

(b) Other outpatient hospital services. The division shall allow benefits for other medically necessary outpatient hospital services (such as chemotherapy, radiation, surgery and therapy), including outpatient services in a clinic or other facility that is not located inside the hospital, but that has been designated as an outpatient facility by the hospital, and that was in operation or under construction on July 1, 2009, provided that the costs and charges associated with the operation of the hospital clinic are included in the hospital's cost report. In addition, the Medicare thirty-five-mile rule will apply to those hospital clinics not located inside the hospital that are constructed after July 1, 2009. Where the same services are reimbursed as clinic services, the division may revise the rate or methodology of outpatient reimbursement to maintain consistency, efficiency, economy and quality of care.

(c) The division is authorized to implement an Ambulatory Payment Classification (APC) methodology for outpatient hospital services.

(d) No service benefits or reimbursement limitations in this section shall apply to payments under an APR-DRG or APC model or a managed care program or similar model described in subsection (H) of this section.

(3) Laboratory and x-ray services.

(4) Nursing facility services.

(a) The division shall make full payment to nursing facilities for each day, not exceeding fifty-two (52) days per year, that a patient is absent from the facility on home leave. Payment may be made for the following home leave days in addition to the fifty-two-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

(b) From and after July 1, 1997, the division shall implement the integrated case-mix payment and quality monitoring system, which includes the fair rental system for property costs and in which recapture of depreciation is eliminated. The division may reduce the payment for hospital leave and therapeutic home leave days to the lower of the case-mix category as computed for the resident on leave using the assessment being utilized for payment at that point in time, or a case-mix score of 1.000 for nursing facilities, and shall compute case-mix scores of residents so that only services provided at the nursing facility are considered in calculating a facility's per diem.

(c) From and after July 1, 1997, all state-owned nursing facilities shall be reimbursed on a full reasonable cost basis.

(d) On or after January 1, 2015, the division shall update the case-mix payment system resource utilization grouper and classifications and fair rental reimbursement system. The division shall develop and implement a payment add-on to reimburse nursing facilities for ventilator dependent resident services.

(e) The division shall develop and implement, not later than January 1, 2001, a case-mix payment add-on determined by time studies and other valid statistical data that will reimburse a nursing facility for the additional cost of caring for a resident who has a diagnosis of Alzheimer's or other related dementia and exhibits symptoms that require special care. Any such case-mix add-on payment shall be supported by a determination of additional cost. The division shall also develop and implement as part of the fair rental reimbursement system for nursing facility beds, an Alzheimer's resident bed depreciation enhanced reimbursement system that will provide an incentive to encourage nursing facilities to convert or construct beds for residents with Alzheimer's or other related dementia.

(f) The division shall develop and implement an assessment process for long-term care services. The division may provide the assessment and related functions directly or through contract with the area agencies on aging.

The division shall apply for necessary federal waivers to assure that additional services providing alternatives to nursing facility care are made available to applicants for nursing facility care.

(5) Periodic screening and diagnostic services for individuals under age twenty-one (21) years as are needed to identify physical and mental defects and to provide health care treatment and other measures designed to correct or ameliorate defects and physical and mental illness and conditions discovered by the screening services, regardless of whether these services are included in the state plan. The division may include in its periodic screening and diagnostic program those discretionary services authorized under the federal regulations adopted to implement Title XIX of the federal Social Security Act, as amended. The division, in obtaining physical therapy services, occupational therapy services, and services for individuals with speech, hearing and language disorders, may enter into a cooperative agreement with the State Department of Education for the provision of those services to handicapped students by public school districts using state funds that are provided from the appropriation to the Department of Education to obtain federal matching funds through the division. The division, in obtaining medical and mental health assessments, treatment, care and services for children who are in, or at risk of being put in, the custody of the Mississippi Department of Human Services may enter into a cooperative agreement with the Mississippi Department of Human Services for the provision of those services using state funds that are provided from the appropriation to the Department of Human Services to obtain federal matching funds through the division.

(6) Physician's services. The division shall allow twelve (12) physician visits annually. The division may develop and implement a different reimbursement model or schedule for physician's services provided by physicians

based at an academic health care center and by physicians at rural health centers that are associated with an academic health care center. From and after January 1, 2010, all fees for physicians' services that are covered only by Medicaid shall be increased to ninety percent (90%) of the rate established on January 1, 2010, and as may be adjusted each July thereafter, under Medicare. The division may provide for a reimbursement rate for physician's services of up to one hundred percent (100%) of the rate established under Medicare for physician's services that are provided after the normal working hours of the physician, as determined in accordance with regulations of the division. The division may reimburse eligible providers as determined by the Patient Protection and Affordable Care Act for certain primary care services as defined by the act at one hundred percent (100%) of the rate established under Medicare.

(7)(a) Home health services for eligible persons, not to exceed in cost the prevailing cost of nursing facility services, not to exceed twenty-five (25) visits per year. All home health visits must be precertified as required by the division.

(b) [Repealed]

(8) Emergency medical transportation services. On January 1, 1994, emergency medical transportation services shall be reimbursed at seventy percent (70%) of the rate established under Medicare (Title XVIII of the federal Social Security Act, as amended). "Emergency medical transportation services" shall mean, but shall not be limited to, the following services by a properly permitted ambulance operated by a properly licensed provider in accordance with the Emergency Medical Services Act of 1974 (Section 41-59-1 et seq.): (i) basic life support, (ii) advanced life support, (iii) mileage, (iv) oxygen, (v) intravenous fluids, (vi) disposable supplies, (vii) similar services.

(9)(a) Legend and other drugs as may be determined by the division.

The division shall establish a mandatory preferred drug list. Drugs not on the mandatory preferred drug list shall be made available by utilizing prior authorization procedures established by the division.

The division may seek to establish relationships with other states in order to lower acquisition costs of prescription drugs to include single source and innovator multiple source drugs or generic drugs. In addition, if allowed by federal law or regulation, the division may seek to establish relationships with and negotiate with other countries to facilitate the acquisition of prescription drugs to include single source and innovator multiple source drugs or generic drugs, if that will lower the acquisition costs of those prescription drugs.

The division shall allow for a combination of prescriptions for single source and innovator multiple source drugs and generic drugs to meet the needs of the beneficiaries, not to exceed five (5) prescriptions per month for each noninstitutionalized Medicaid beneficiary, with not more than two (2) of those prescriptions being for single source or innovator multiple source drugs unless the single source or innovator multiple source drug is less expensive than the generic equivalent.

The executive director may approve specific maintenance drugs for beneficiaries with certain medical conditions, which may be prescribed and dispensed in three-month supply increments.

Drugs prescribed for a resident of a psychiatric residential treatment facility must be provided in true unit doses when available. The division may require that drugs not covered by Medicare Part D for a resident of a long-term care facility be provided in true unit doses when available. Those drugs that were originally billed to the division but are not used by a resident in any of those facilities shall be returned to the billing pharmacy for credit to the division, in accordance with the guidelines of the State Board of Pharmacy and any requirements of federal law and regulation. Drugs shall be dispensed to a recipient and only one (1) dispensing fee per month may be charged. The division shall develop a methodology for reimbursing for restocked drugs, which shall include a restock fee as determined by the division not exceeding Seven Dollars and Eighty-two Cents ($7.82).

The voluntary preferred drug list shall be expanded to function in the interim in order to have a manageable prior authorization system, thereby minimizing disruption of service to beneficiaries.

Except for those specific maintenance drugs approved by the executive director, the division shall not reimburse for any portion of a prescription that exceeds a thirty-one-day supply of the drug based on the daily dosage.

The division shall develop and implement a program of payment for additional pharmacist services, with payment to be based on demonstrated savings, but in no case shall the total payment exceed twice the amount of the dispensing fee.

All claims for drugs for dually eligible Medicare/Medicaid beneficiaries that are paid for by Medicare must be submitted to Medicare for payment before they may be processed by the division's online payment system.

The division shall develop a pharmacy policy in which drugs in tamper-resistant packaging that are prescribed for a resident of a nursing facility but are not dispensed to the resident shall be returned to the pharmacy and not billed to Medicaid, in accordance with guidelines of the State Board of Pharmacy.

The division shall develop and implement a method or methods by which the division will provide on a regular basis to Medicaid providers who are authorized to prescribe drugs, information about the costs to the Medicaid program of single source drugs and innovator multiple source drugs, and information about other drugs that may be prescribed as alternatives to those single source drugs and innovator multiple source drugs and the costs to the Medicaid program of those alternative drugs.

Notwithstanding any law or regulation, information obtained or maintained by the division regarding the prescription drug program, including trade secrets and manufacturer or labeler pricing, is confidential and not subject to disclosure except to other state agencies.

(b) Payment by the division for covered multisource drugs shall be limited to the lower of the upper limits established and published by the Centers for Medicare and Medicaid Services (CMS) plus a dispensing fee, or the estimated acquisition cost (EAC) as determined by the division, plus a dispensing fee, or the providers' usual and customary charge to the general public.

Payment for other covered drugs, other than multisource drugs with CMS upper limits, shall not exceed the lower of the estimated acquisition cost as determined by the division, plus a dispensing fee or the providers' usual and customary charge to the general public.

Payment for nonlegend or over-the-counter drugs covered by the division shall be reimbursed at the lower of the division's estimated shelf price or the providers' usual and customary charge to the general public.

The dispensing fee for each new or refill prescription, including nonlegend or over-the-counter drugs covered by the division, shall be not less than Three Dollars and Ninety-one Cents ($3.91), as determined by the division.

The division shall not reimburse for single source or innovator multiple source drugs if there are equally effective generic equivalents available and if the generic equivalents are the least expensive.

It is the intent of the Legislature that the pharmacists providers be reimbursed for the reasonable costs of filling and dispensing prescriptions for Medicaid beneficiaries.

(10)(a) Dental care that is an adjunct to treatment of an acute medical or surgical condition; services of oral surgeons and dentists in connection with surgery related to the jaw or any structure contiguous to the jaw or the reduction of any fracture of the jaw or any facial bone; and emergency dental extractions and treatment related thereto. On July 1, 2007, fees for dental care and surgery under authority of this paragraph (10) shall be reimbursed as provided in subparagraph (b). It is the intent of the Legislature that this rate revision for dental services will be an incentive designed to increase the number of dentists who actively provide Medicaid services. This dental services rate revision shall be known as the "James Russell Dumas Medicaid Dental Incentive Program."

The division shall annually determine the effect of this incentive by evaluating the number of dentists who are Medicaid providers, the number who and the degree to which they are actively billing Medicaid, the geographic trends of where dentists are offering what types of Medicaid services and other statistics pertinent to the goals of this legislative intent. This data shall be presented to the Chair of the Senate Public Health and Welfare Committee and the Chair of the House Medicaid Committee.

(b) The Division of Medicaid shall establish a fee schedule, to be effective from and after July 1, 2007, for dental services. The schedule shall provide for a fee for each dental service that is equal to a percentile of normal and customary private provider fees, as defined by the Ingenix

Customized Fee Analyzer Report, which percentile shall be determined by the division. The schedule shall be reviewed annually by the division and dental fees shall be adjusted to reflect the percentile determined by the division.

(c) For fiscal year 2008, the amount of state funds appropriated for reimbursement for dental care and surgery shall be increased by ten percent (10%) of the amount of state fund expenditures for that purpose for fiscal year 2007. For each of fiscal years 2009 and 2010, the amount of state funds appropriated for reimbursement for dental care and surgery shall be increased by ten percent (10%) of the amount of state fund expenditures for that purpose for the preceding fiscal year.

(d) The division shall establish an annual benefit limit of Two Thousand Five Hundred Dollars ($2,500.00) in dental expenditures per Medicaid-eligible recipient; however, a recipient may exceed the annual limit on dental expenditures provided in this paragraph with prior approval of the division.

(e) The division shall include dental services as a necessary component of overall health services provided to children who are eligible for services.

(f) This paragraph (10) shall stand repealed on July 1, 2016.

(11) Eyeglasses for all Medicaid beneficiaries who have (a) had surgery on the eyeball or ocular muscle that results in a vision change for which eyeglasses or a change in eyeglasses is medically indicated within six (6) months of the surgery and is in accordance with policies established by the division, or (b) one (1) pair every five (5) years and in accordance with policies established by the division. In either instance, the eyeglasses must be prescribed by a physician skilled in diseases of the eye or an optometrist, whichever the beneficiary may select.

(12) Intermediate care facility services.

(a) The division shall make full payment to all intermediate care facilities for individuals with intellectual disabilities for each day, not exceeding eighty-four (84) days per year, that a patient is absent from the facility on home leave. Payment may be made for the following home leave days in addition to the eighty-four-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

(b) All state-owned intermediate care facilities for individuals with intellectual disabilities shall be reimbursed on a full reasonable cost basis.

(c) Effective January 1, 2015, the division shall update the fair rental reimbursement system for intermediate care facilities for individuals with intellectual disabilities.

(13) Family planning services, including drugs, supplies and devices, when those services are under the supervision of a physician or nurse practitioner.

(14) Clinic services. Such diagnostic, preventive, therapeutic, rehabilitative or palliative services furnished to an outpatient by or under the

supervision of a physician or dentist in a facility that is not a part of a hospital but that is organized and operated to provide medical care to outpatients. Clinic services shall include any services reimbursed as outpatient hospital services that may be rendered in such a facility, including those that become so after July 1, 1991. On July 1, 1999, all fees for physicians' services reimbursed under authority of this paragraph (14) shall be reimbursed at ninety percent (90%) of the rate established on January 1, 1999, and as may be adjusted each July thereafter, under Medicare (Title XVIII of the federal Social Security Act, as amended). The division may develop and implement a different reimbursement model or schedule for physician's services provided by physicians based at an academic health care center and by physicians at rural health centers that are associated with an academic health care center. The division may provide for a reimbursement rate for physician's clinic services of up to one hundred percent (100%) of the rate established under Medicare for physician's services that are provided after the normal working hours of the physician, as determined in accordance with regulations of the division.

(15) Home- and community-based services for the elderly and disabled, as provided under Title XIX of the federal Social Security Act, as amended, under waivers, subject to the availability of funds specifically appropriated for that purpose by the Legislature.

The Division of Medicaid is directed to apply for a waiver amendment to increase payments for all adult day care facilities based on acuity of individual patients, with a maximum of Seventy-Five Dollars ($75.00) per day for the most acute patients.

(16) Mental health services. Approved therapeutic and case management services (a) provided by an approved regional mental health/intellectual disability center established under Sections 41-19-31 through 41-19-39, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental health/intellectual disability center if determined necessary by the Department of Mental Health, using state funds that are provided in the appropriation to the division to match federal funds, or (b) provided by a facility that is certified by the State Department of Mental Health to provide therapeutic and case management services, to be reimbursed on a fee for service basis, or (c) provided in the community by a facility or program operated by the Department of Mental Health. Any such services provided by a facility described in subparagraph (b) must have the prior approval of the division to be reimbursable under this section. After June 30, 1997, mental health services provided by regional mental health/intellectual disability centers established under Sections 41-19-31 through 41-19-39, or by hospitals as defined in Section 41-9-3(a) and/or their subsidiaries and divisions, or by psychiatric residential treatment facilities as defined in Section 43-11-1, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental health/intellectual disability center if determined neces-

sary by the Department of Mental Health, shall not be included in or provided under any capitated managed care pilot program provided for under paragraph (24) of this section.

(17) Durable medical equipment services and medical supplies. Precertification of durable medical equipment and medical supplies must be obtained as required by the division. The Division of Medicaid may require durable medical equipment providers to obtain a surety bond in the amount and to the specifications as established by the Balanced Budget Act of 1997.

(18)(a) Notwithstanding any other provision of this section to the contrary, as provided in the Medicaid state plan amendment or amendments as defined in Section 43-13-145(10), the division shall make additional reimbursement to hospitals that serve a disproportionate share of low-income patients and that meet the federal requirements for those payments as provided in Section 1923 of the federal Social Security Act and any applicable regulations. It is the intent of the Legislature that the division shall draw down all available federal funds allotted to the state for disproportionate share hospitals. However, from and after January 1, 1999, public hospitals participating in the Medicaid disproportionate share program may be required to participate in an intergovernmental transfer program as provided in Section 1903 of the federal Social Security Act and any applicable regulations.

(b) The division shall establish a Medicare Upper Payment Limits Program, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations, for hospitals, and may establish a Medicare Upper Payment Limits Program for nursing facilities, and may establish a Medicare Upper Payment Limits Program for physicians employed or contracted by public hospitals. Upon successful implementation of a Medicare Upper Payment program for physicians employed by public hospitals, the division may develop a plan for implementing an Upper Payment Limit program for physicians employed by other classes of hospitals. The division shall assess each hospital and, if the program is established for nursing facilities, shall assess each nursing facility, for the sole purpose of financing the state portion of the Medicare Upper Payment Limits Program. The hospital assessment shall be as provided in Section 43-13-145(4)(a) and the nursing facility assessment, if established, shall be based on Medicaid utilization or other appropriate method consistent with federal regulations. The assessment will remain in effect as long as the state participates in the Medicare Upper Payment Limits Program. Public hospitals with physicians participating in the Medicare Upper Payment Limits Program shall be required to participate in an intergovernmental transfer program. As provided in the Medicaid state plan amendment or amendments as defined in Section 43-13-145(10), the division shall make additional reimbursement to hospitals and, if the program is established for nursing facilities, shall make additional reimbursement to nursing facilities, for the Medicare Upper Payment Limits, and, if the program is established for physicians, shall make additional reimbursement for physicians, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations. Effective upon implementation of the Mississippi Hospital Access Program (MHAP) provided in subparagraph (c)(i) below, the hospital portion of the inpatient Upper Payment Limits program shall transition into and be replaced by the MHAP program.

(c)(i) Not later than December 1, 2015, the division shall, subject to approval by the Centers for Medicare and Medicaid Services (CMS), establish, implement and operate a Mississippi Hospital Access Program (MHAP) for the purpose of protecting patient access to hospital care through hospital inpatient reimbursement programs provided in this section designed to maintain total hospital reimbursement for inpatient services rendered by in-state hospitals and the out-of-state hospital that is authorized by federal law to submit intergovernmental transfers (IGTs) to the State of Mississippi and is classified as Level I trauma center located in a county contiguous to the state line at the maximum levels permissible under applicable federal statutes and regulations, at which time the current inpatient Medicare Upper Payment Limits (UPL) program for hospital inpatient services shall transition to the MHAP.

(ii) Subject only to approval by the Centers for Medicare and Medicaid Services (CMS) where required, the MHAP shall provide increased inpatient capitation (PMPM) payments to managed care entities contracting with the division pursuant to subsection (H) of this section to support availability of hospital services or such other payments permissible under federal law necessary to accomplish the intent of this subsection. For inpatient services rendered after July 1, 2015, but prior to the effective date of CMS approval and full implementation of this program, the division may pay lump-sum enhanced, transition payments, prorated inpatient UPL payments based upon fiscal year 2015 June distribution levels, enhanced hospital access (PMPM) payments or such other methodologies as are approved by CMS such that the level of additional reimbursement required by this section is paid for all Medicaid hospital inpatient services delivered in fiscal year 2016.

(iii) The intent of this subparagraph (c) is that effective for all inpatient hospital Medicaid services during state fiscal year 2016, and so long as this provision shall remain in effect hereafter, the division shall to the fullest extent feasible replace the additional reimbursement for hospital inpatient services under the inpatient Medicare Upper Payment Limits (UPL) program with additional reimbursement under the MHAP.

(iv) The division shall assess each hospital as provided in Section 43-13-145(4)(a) for the purpose of financing the state portion of the MHAP and such other purposes as specified in Section 43-13-145. The assessment will remain in effect as long as the MHAP is in effect.

(v) In the event that the MHAP program under this subparagraph (c) is not approved by CMS, the inpatient UPL program under subparagraph (b) shall immediately become restored in the manner required to provide the maximum permissible level of UPL payments to hospital providers for all inpatient services rendered from and after July 1, 2015.

(19)(a) Perinatal risk management services. The division shall promulgate regulations to be effective from and after October 1, 1988, to establish a comprehensive perinatal system for risk assessment of all pregnant and infant Medicaid recipients and for management, education and follow-up for those who are determined to be at risk. Services to be performed include case management, nutrition assessment/counseling, psychosocial assessment/counseling and health education. The division shall contract with the State Department of Health to provide the services within this paragraph (Perinatal High Risk Management/Infant Services System (PHRM/ISS)). The State Department of Health as the agency for PHRM/ISS for the Division of Medicaid shall be reimbursed on a full reasonable cost basis.

(b) Early intervention system services. The division shall cooperate with the State Department of Health, acting as lead agency, in the development and implementation of a statewide system of delivery of early intervention services, under Part C of the Individuals with Disabilities Education Act (IDEA). The State Department of Health shall certify annually in writing to the executive director of the division the dollar amount of state early intervention funds available that will be utilized as a certified match for Medicaid matching funds. Those funds then shall be used to provide expanded targeted case management services for Medicaid eligible children with special needs who are eligible for the state's early intervention system. Qualifications for persons providing service coordination shall be determined by the State Department of Health and the Division of Medicaid.

(20) Home- and community-based services for physically disabled approved services as allowed by a waiver from the United States Department of Health and Human Services for home- and community-based services for physically disabled people using state funds that are provided from the appropriation to the State Department of Rehabilitation Services and used to match federal funds under a cooperative agreement between the division and the department, provided that funds for these services are specifically appropriated to the Department of Rehabilitation Services.

(21) Nurse practitioner services. Services furnished by a registered nurse who is licensed and certified by the Mississippi Board of Nursing as a nurse practitioner, including, but not limited to, nurse anesthetists, nurse midwives, family nurse practitioners, family planning nurse practitioners, pediatric nurse practitioners, obstetrics-gynecology nurse practitioners and neonatal nurse practitioners, under regulations adopted by the division. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician. The division may provide for a reimbursement rate for nurse practitioner services of up to one hundred percent (100%) of the reimbursement rate for

comparable services rendered by a physician for nurse practitioner services that are provided after the normal working hours of the nurse practitioner, as determined in accordance with regulations of the division.

(22) Ambulatory services delivered in federally qualified health centers, rural health centers and clinics of the local health departments of the State Department of Health for individuals eligible for Medicaid under this article based on reasonable costs as determined by the division.

(23) Inpatient psychiatric services. Inpatient psychiatric services to be determined by the division for recipients under age twenty-one (21) that are provided under the direction of a physician in an inpatient program in a licensed acute care psychiatric facility or in a licensed psychiatric residential treatment facility, before the recipient reaches age twenty-one (21) or, if the recipient was receiving the services immediately before he or she reached age twenty-one (21), before the earlier of the date he or she no longer requires the services or the date he or she reaches age twenty-two (22), as provided by federal regulations. From and after January 1, 2015, the division shall update the fair rental reimbursement system for psychiatric residential treatment facilities. Precertification of inpatient days and residential treatment days must be obtained as required by the division. From and after July 1, 2009, all state-owned and state-operated facilities that provide inpatient psychiatric services to persons under age twenty-one (21) who are eligible for Medicaid reimbursement shall be reimbursed for those services on a full reasonable cost basis.

(24) [Deleted]

(25) [Deleted]

(26) Hospice care. As used in this paragraph, the term “hospice care” means a coordinated program of active professional medical attention within the home and outpatient and inpatient care that treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social and economic stresses that are experienced during the final stages of illness and during dying and bereavement and meets the Medicare requirements for participation as a hospice as provided in federal regulations.

(27) Group health plan premiums and cost sharing if it is cost-effective as defined by the United States Secretary of Health and Human Services.

(28) Other health insurance premiums that are cost-effective as defined by the United States Secretary of Health and Human Services. Medicare eligible must have Medicare Part B before other insurance premiums can be paid.

(29) The Division of Medicaid may apply for a waiver from the United States Department of Health and Human Services for home- and community-based services for developmentally disabled people using state funds that are provided from the appropriation to the State Department of Mental Health and/or funds transferred to the department by a political subdivision

or instrumentality of the state and used to match federal funds under a cooperative agreement between the division and the department, provided that funds for these services are specifically appropriated to the Department of Mental Health and/or transferred to the department by a political subdivision or instrumentality of the state.

(30) Pediatric skilled nursing services for eligible persons under twenty-one (21) years of age.

(31) Targeted case management services for children with special needs, under waivers from the United States Department of Health and Human Services, using state funds that are provided from the appropriation to the Mississippi Department of Human Services and used to match federal funds under a cooperative agreement between the division and the department.

(32) Care and services provided in Christian Science Sanatoria listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., rendered in connection with treatment by prayer or spiritual means to the extent that those services are subject to reimbursement under Section 1903 of the federal Social Security Act.

(33) Podiatrist services.

(34) Assisted living services as provided through home- and community-based services under Title XIX of the federal Social Security Act, as amended, subject to the availability of funds specifically appropriated for that purpose by the Legislature.

(35) Services and activities authorized in Sections 43-27-101 and 43-27-103, using state funds that are provided from the appropriation to the Mississippi Department of Human Services and used to match federal funds under a cooperative agreement between the division and the department.

(36) Nonemergency transportation services for Medicaid-eligible persons, to be provided by the Division of Medicaid. The division may contract with additional entities to administer nonemergency transportation services as it deems necessary. All providers shall have a valid driver's license, vehicle inspection sticker, valid vehicle license tags and a standard liability insurance policy covering the vehicle. The division may pay providers a flat fee based on mileage tiers, or in the alternative, may reimburse on actual miles traveled. The division may apply to the Center for Medicare and Medicaid Services (CMS) for a waiver to draw federal matching funds for nonemergency transportation services as a covered service instead of an administrative cost. The PEER Committee shall conduct a performance evaluation of the nonemergency transportation program to evaluate the administration of the program and the providers of transportation services to determine the most cost-effective ways of providing nonemergency transportation services to the patients served under the program. The performance evaluation shall be completed and provided to the members of the Senate Public Health and Welfare Committee and the House Medicaid Committee not later than January 15, 2008.

(37) [Deleted]

(38) Chiropractic services. A chiropractor's manual manipulation of the spine to correct a subluxation, if x-ray demonstrates that a subluxation exists and if the subluxation has resulted in a neuromusculoskeletal condition for which manipulation is appropriate treatment, and related spinal x-rays performed to document these conditions. Reimbursement for chiropractic services shall not exceed Seven Hundred Dollars ($700.00) per year per beneficiary.

(39) Dually eligible Medicare/Medicaid beneficiaries. The division shall pay the Medicare deductible and coinsurance amounts for services available under Medicare, as determined by the division. From and after July 1, 2009, the division shall reimburse crossover claims for inpatient hospital services and crossover claims covered under Medicare Part B in the same manner that was in effect on January 1, 2008, unless specifically authorized by the Legislature to change this method.

(40) [Deleted]

(41) Services provided by the State Department of Rehabilitation Services for the care and rehabilitation of persons with spinal cord injuries or traumatic brain injuries, as allowed under waivers from the United States Department of Health and Human Services, using up to seventy-five percent (75%) of the funds that are appropriated to the Department of Rehabilitation Services from the Spinal Cord and Head Injury Trust Fund established under Section 37-33-261 and used to match federal funds under a cooperative agreement between the division and the department.

(42) Notwithstanding any other provision in this article to the contrary, the division may develop a population health management program for women and children health services through the age of one (1) year. This program is primarily for obstetrical care associated with low birth weight and preterm babies. The division may apply to the federal Centers for Medicare and Medicaid Services (CMS) for a Section 1115 waiver or any other waivers that may enhance the program. In order to effect cost savings, the division may develop a revised payment methodology that may include at-risk capitated payments, and may require member participation in accordance with the terms and conditions of an approved federal waiver.

(43) The division shall provide reimbursement, according to a payment schedule developed by the division, for smoking cessation medications for pregnant women during their pregnancy and other Medicaid-eligible women who are of child-bearing age.

(44) Nursing facility services for the severely disabled.

(a) Severe disabilities include, but are not limited to, spinal cord injuries, closed-head injuries and ventilator dependent patients.

(b) Those services must be provided in a long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities.

(45) Physician assistant services. Services furnished by a physician assistant who is licensed by the State Board of Medical Licensure and is

practicing with physician supervision under regulations adopted by the board, under regulations adopted by the division. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician. The division may provide for a reimbursement rate for physician assistant services of up to one hundred percent (100%) or the reimbursement rate for comparable services rendered by a physician for physician assistant services that are provided after the normal working hours of the physician assistant, as determined in accordance with regulations of the division.

(46) The division shall make application to the federal Centers for Medicare and Medicaid Services (CMS) for a waiver to develop and provide services for children with serious emotional disturbances as defined in Section 43-14-1(1), which may include home- and community-based services, case management services or managed care services through mental health providers certified by the Department of Mental Health. The division may implement and provide services under this waivered program only if funds for these services are specifically appropriated for this purpose by the Legislature, or if funds are voluntarily provided by affected agencies.

(47)(a) Notwithstanding any other provision in this article to the contrary, the division may develop and implement disease management programs for individuals with high-cost chronic diseases and conditions, including the use of grants, waivers, demonstrations or other projects as necessary.

(b) Participation in any disease management program implemented under this paragraph (47) is optional with the individual. An individual must affirmatively elect to participate in the disease management program in order to participate, and may elect to discontinue participation in the program at any time.

(48) Pediatric long-term acute care hospital services.

(a) Pediatric long-term acute care hospital services means services provided to eligible persons under twenty-one (21) years of age by a freestanding Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days and that is primarily engaged in providing chronic or long-term medical care to persons under twenty-one (21) years of age.

(b) The services under this paragraph (48) shall be reimbursed as a separate category of hospital services.

(49) The division shall establish copayments and/or coinsurance for all Medicaid services for which copayments and/or coinsurance are allowable under federal law or regulation, and shall set the amount of the copayment and/or coinsurance for each of those services at the maximum amount allowable under federal law or regulation.

(50) Services provided by the State Department of Rehabilitation Services for the care and rehabilitation of persons who are deaf and blind, as allowed under waivers from the United States Department of Health and Human Services to provide home- and community-based services using state

funds that are provided from the appropriation to the State Department of Rehabilitation Services or if funds are voluntarily provided by another agency.

(51) Upon determination of Medicaid eligibility and in association with annual redetermination of Medicaid eligibility, beneficiaries shall be encouraged to undertake a physical examination that will establish a base-line level of health and identification of a usual and customary source of care (a medical home) to aid utilization of disease management tools. This physical examination and utilization of these disease management tools shall be consistent with current United States Preventive Services Task Force or other recognized authority recommendations.

For persons who are determined ineligible for Medicaid, the division will provide information and direction for accessing medical care and services in the area of their residence.

(52) Notwithstanding any provisions of this article, the division may pay enhanced reimbursement fees related to trauma care, as determined by the division in conjunction with the State Department of Health, using funds appropriated to the State Department of Health for trauma care and services and used to match federal funds under a cooperative agreement between the division and the State Department of Health. The division, in conjunction with the State Department of Health, may use grants, waivers, demonstrations, or other projects as necessary in the development and implementation of this reimbursement program.

(53) Targeted case management services for high-cost beneficiaries shall be developed by the division for all services under this section.

(54) Adult foster care services pilot program. Social and protective services on a pilot program basis in an approved foster care facility for vulnerable adults who would otherwise need care in a long-term care facility, to be implemented in an area of the state with the greatest need for such program, under the Medicaid Waivers for the Elderly and Disabled program or an assisted living waiver. The division may use grants, waivers, demonstrations or other projects as necessary in the development and implementation of this adult foster care services pilot program.

(55) Therapy services. The plan of care for therapy services may be developed to cover a period of treatment for up to six (6) months, but in no event shall the plan of care exceed a six-month period of treatment. The projected period of treatment must be indicated on the initial plan of care and must be updated with each subsequent revised plan of care. Based on medical necessity, the division shall approve certification periods for less than or up to six (6) months, but in no event shall the certification period exceed the period of treatment indicated on the plan of care. The appeal process for any reduction in therapy services shall be consistent with the appeal process in federal regulations.

(56) Prescribed pediatric extended care centers services for medically dependent or technologically dependent children with complex medical conditions that require continual care as prescribed by the child's attending physician, as determined by the division.

(57) No Medicaid benefit shall restrict coverage for medically appropriate treatment prescribed by a physician and agreed to by a fully informed individual, or if the individual lacks legal capacity to consent by a person who has legal authority to consent on his or her behalf, based on an individual's diagnosis with a terminal condition. As used in this paragraph (57), "terminal condition" means any aggressive malignancy, chronic end-stage cardiovascular or cerebral vascular disease, or any other disease, illness or condition which a physician diagnoses as terminal.

(B) Notwithstanding any other provision of this article to the contrary, the division shall reduce the rate of reimbursement to providers for any service provided under this section by five percent (5%) of the allowed amount for that service. However, the reduction in the reimbursement rates required by this subsection (B) shall not apply to inpatient hospital services, nursing facility services, intermediate care facility services, psychiatric residential treatment facility services, pharmacy services provided under subsection (A)(9) of this section, or any service provided by the University of Mississippi Medical Center or a state agency, a state facility or a public agency that either provides its own state match through intergovernmental transfer or certification of funds to the division, or a service for which the federal government sets the reimbursement methodology and rate. From and after January 1, 2010, the reduction in the reimbursement rates required by this subsection (B) shall not apply to physicians' services. In addition, the reduction in the reimbursement rates required by this subsection (B) shall not apply to case management services and home-delivered meals provided under the home- and community-based services program for the elderly and disabled by a planning and development district (PDD). Planning and development districts participating in the home- and community-based services program for the elderly and disabled as case management providers shall be reimbursed for case management services at the maximum rate approved by the Centers for Medicare and Medicaid Services (CMS).

(C) The division may pay to those providers who participate in and accept patient referrals from the division's emergency room redirection program a percentage, as determined by the division, of savings achieved according to the performance measures and reduction of costs required of that program. Federally qualified health centers may participate in the emergency room redirection program, and the division may pay those centers a percentage of any savings to the Medicaid program achieved by the centers' accepting patient referrals through the program, as provided in this subsection (C).

(D) Notwithstanding any provision of this article, except as authorized in the following subsection and in Section 43-13-139, neither (a) the limitations on quantity or frequency of use of or the fees or charges for any of the care or services available to recipients under this section, nor (b) the payments, payment methodology as provided below in this subsection (D), or rates of reimbursement to providers rendering care or services authorized under this section to recipients, may be increased, decreased or otherwise changed from the levels in effect on July 1, 1999, unless they are authorized by an amendment to this section by the Legislature. However, the restriction in this subsection shall not prevent the division from changing the payments, payment methodology as provided below in this subsection (D), or rates of reimbursement to providers without an amendment to this section whenever those changes are required by federal law or regulation, or whenever those changes are necessary to correct administrative errors or omissions in calculating those payments or rates of reimbursement. The prohibition on any changes in payment methodology provided in this subsection (D) shall apply only to payment methodologies used for determining the rates of reimbursement for inpatient hospital services, outpatient hospital services, nursing facility services, and/or pharmacy services, except as required by federal law, and the federally mandated rebasing of rates as required by the Centers for Medicare and Medicaid Services (CMS) shall not be considered payment methodology for purposes of this subsection (D). No service benefits or reimbursement limitations in this section shall apply to payments under an APR-DRG or APC model or a managed care program or similar model described in subsection (H) of this section.

(E) Notwithstanding any provision of this article, no new groups or categories of recipients and new types of care and services may be added without enabling legislation from the Mississippi Legislature, except that the division may authorize those changes without enabling legislation when the addition of recipients or services is ordered by a court of proper authority.

(F) The executive director shall keep the Governor advised on a timely basis of the funds available for expenditure and the projected expenditures. If current or projected expenditures of the division are reasonably anticipated to exceed the amount of funds appropriated to the division for any fiscal year, the Governor, after consultation with the executive director, shall discontinue any or all of the payment of the types of care and services as provided in this section that are deemed to be optional services under Title XIX of the federal Social Security Act, as amended, and when necessary, shall institute any other cost containment measures on any program or programs authorized under the article to the extent allowed under the federal law governing that program or programs. However, the Governor shall not be authorized to discontinue or eliminate any service under this section that is mandatory under federal law, or to discontinue or eliminate, or adjust income limits or resource limits for, any eligibility category or group under Section 43-13-115. Beginning in fiscal year 2010 and in fiscal years thereafter, when Medicaid expenditures are projected to exceed funds available for any quarter in the fiscal year, the division shall submit the expected shortfall information to the PEER Committee, which shall review the computations of the division and report its findings to the Legislative Budget Office within thirty (30) days of such notification by the division, and not later than January 7 in any year. If expenditure reductions or cost containments are implemented, the Governor may implement a maximum amount of state share expenditure reductions to providers, of which hospitals will be responsible for twenty-five percent (25%) of provider reductions as follows: in fiscal year 2010, the maximum amount shall be

Twenty-four Million Dollars ($24,000,000.00); in fiscal year 2011, the maximum amount shall be Thirty-two Million Dollars ($32,000,000.00); and in fiscal year 2012 and thereafter, the maximum amount shall be Forty Million Dollars ($40,000,000.00). However, instead of implementing cuts, the hospital share shall be in the form of an additional assessment not to exceed Ten Million Dollars ($10,000,000.00) as provided in Section 43-13-145(4)(a)(ii). If Medicaid expenditures are projected to exceed the amount of funds appropriated to the division in any fiscal year in excess of the expenditure reductions to providers, then funds shall be transferred by the State Fiscal Officer from the Health Care Trust Fund into the Health Care Expendable Fund and to the Governor's Office, Division of Medicaid, from the Health Care Expendable Fund, in the amount and at such time as requested by the Governor to reconcile the deficit. If the cost containment measures described above have been implemented and there are insufficient funds in the Health Care Trust Fund to reconcile any remaining deficit in any fiscal year, the Governor shall institute any other additional cost containment measures on any program or programs authorized under this article to the extent allowed under federal law. Hospitals shall be responsible for twenty-five percent (25%) of any additional imposed provider cuts. However, instead of implementing hospital expenditure reductions, the hospital reductions shall be in the form of an additional assessment not to exceed twenty-five percent (25%) of provider expenditure reductions as provided in Section 43-13-145(4)(a)(ii). It is the intent of the Legislature that the expenditures of the division during any fiscal year shall not exceed the amounts appropriated to the division for that fiscal year.

(G) Notwithstanding any other provision of this article, it shall be the duty of each nursing facility, intermediate care facility for individuals with intellectual disabilities, psychiatric residential treatment facility, and nursing facility for the severely disabled that is participating in the Medicaid program to keep and maintain books, documents and other records as prescribed by the Division of Medicaid in substantiation of its cost reports for a period of three (3) years after the date of submission to the Division of Medicaid of an original cost report, or three (3) years after the date of submission to the Division of Medicaid of an amended cost report.

(H)(1) Notwithstanding any other provision of this article, the division is authorized to implement (a) a managed care program, (b) a coordinated care program, (c) a coordinated care organization program, (d) a health maintenance organization program, (e) a patient-centered medical home program, (f) an accountable care organization program, (g) provider-sponsored health plan, or (h) any combination of the above programs. Managed care programs, coordinated care programs, coordinated care organization programs, health maintenance organization programs, patient-centered medical home programs, accountable care organization programs, provider-sponsored health plans, or any combination of the above programs or other similar programs implemented by the division under this section shall be limited to the greater of (i) forty-five percent (45%) of the total enrollment of Medicaid beneficiaries, or (ii) the categories of beneficiaries participating in the program as of January 1, 2014, plus the categories of beneficiaries composed primarily of persons younger than nineteen (19) years of age, and the division is authorized to enroll categories of beneficiaries in such program(s) as long as the appropriate limitations are not exceeded in the aggregate. As a condition for the approval of any program under this subsection (H)(1), the division shall require that no program may:

(a) Pay providers at a rate that is less than the Medicaid All-Patient Refined-Diagnosis Related Groups (APR-DRG) reimbursement rate;

(b) Override the medical decisions of hospital physicians or staff regarding patients admitted to a hospital for an emergency medical condition as defined by 42 US Code Section 1395dd. This restriction (b) does not prohibit the retrospective review of the appropriateness of the determination that an emergency medical condition exists by chart review or coding algorithm, nor does it prohibit prior authorization for nonemergency hospital admissions;

(c) Pay providers at a rate that is less than the normal Medicaid reimbursement rate; however, the division may approve use of innovative payment models that recognize alternative payment models, including quality and value-based payments, provided both parties mutually agree and the Division of Medicaid approves of said models. Participation in the provider network of any managed care, coordinated care, provider-sponsored health plan, or similar contractor shall not be conditioned on the provider's agreement to accept such alternative payment models;

(d) Implement a prior authorization program for prescription drugs that is more stringent than the prior authorization processes used by the division in its administration of the Medicaid program;

(e) Implement a policy that does not comply with the prescription drugs payment requirements established in subsection (A)(9) of this section;

(f) Implement a preferred drug list that is more stringent than the mandatory preferred drug list established by the division under subsection (A)(9) of this section;

(g) Implement a policy which denies beneficiaries with hemophilia access to the federally funded hemophilia treatment centers as part of the Medicaid Managed Care network of providers. All Medicaid beneficiaries with hemophilia shall receive unrestricted access to anti-hemophilia factor products through noncapitated reimbursement programs.

(2) Any contractors providing direct patient care under a managed care program established in this section shall provide to the Legislature and the division statistical data to be shared with provider groups in order to improve patient access, appropriate utilization, cost savings and health outcomes.

(3) All health maintenance organizations, coordinated care organizations, provider-sponsored health plans, or other organizations paid for services on a capitated basis by the division under any managed care program or coordinated care program implemented by the division under

this section shall reimburse all providers in those organizations at rates no lower than those provided under this section for beneficiaries who are not participating in those programs.

(4) No health maintenance organization, coordinated care organization, provider-sponsored health plan, or other organization paid for services on a capitated basis by the division under any managed care program or coordinated care program implemented by the division under this section shall require its providers or beneficiaries to use any pharmacy that ships, mails or delivers prescription drugs or legend drugs or devices.

(I) [Deleted]

(J) There shall be no cuts in inpatient and outpatient hospital payments, or allowable days or volumes, as long as the hospital assessment provided in Section 43-13-145 is in effect. This subsection (J) shall not apply to decreases in payments that are a result of: reduced hospital admissions, audits or payments under the APR-DRG or APC models, or a managed care program or similar model described in subsection (H) of this section.

(K) This section shall stand repealed on June 30, 2018.

SOURCES: Codes, 1942, § 7290-39; Laws, 1969, Ex Sess, ch. 37, § 9; Laws, 1972, ch. 319, § 1; Laws, 1973, ch. 312, § 2; Laws, 1978, ch. 489, § 2; Laws, 1980, ch. 504; Laws, 1980, ch. 508, § 5; Laws, 1981, ch. 355, § 1; Laws, 1982, ch. 471; Laws, 1984, ch. 488, § 48; Laws, 1985, ch. 471; Laws, 1986, ch. 437, § 3; Laws, 1987, ch. 513, § 2; Laws, 1988, ch. 390; Laws, 1988, ch. 513; Laws, 1989, ch. 527, § 5; Laws, 1990, ch. 548, § 2; Laws, 1991, ch. 579, § 2; Laws, 1992, ch. 487, § 2; Laws, 1993, ch. 388, § 5; Laws, 1993, ch. 609, § 3; Laws, 1994, ch. 649, § 2; Laws, 1995, ch. 614, § 2; Laws, 1996, ch. 518, § 1; Laws, 1997, ch. 380, § 1; Laws, 1997, ch. 587, § 6; Laws, 1998, ch. 377, § 1; Laws, 1999, ch. 467, § 1; Laws, 1999, ch. 477, § 2; Laws, 1999, ch. 495, § 1; Laws, 1999, ch. 593, § 1; Laws, 2000, ch. 301, § 8; Laws, 2000, ch. 328, § 1; Laws, 2000, ch. 571, § 1; Laws, 2001, ch. 305, § 1; Laws, 2001, ch. 385, § 1; Laws, 2001, ch. 453, § 1; Laws, 2001, ch. 594, § 2; Laws, 2002, ch. 304, § 1; Laws, 2002, ch. 454, § 1; Laws, 2002, ch. 636B, § 1; Laws, 2003, ch. 543, § 3; Laws, 2004, ch. 593, § 3; Laws, 2005, ch. 470, § 2; Laws, 2007, ch. 552, § 4; Laws, 2007, ch. 553, § 2; Laws, 2008, ch. 360, § 2; Laws, 2009, 2nd Ex Sess, ch. 118, § 2; Laws, 2010, ch. 476, § 71; Laws, 2012, ch. 524, § 13; Laws, 2012, ch. 530, § 2; Laws, 2013, 2nd Ex Sess, ch. 1, § 2; Laws, 2014, ch. 488, § 1; Laws, 2015, ch. 483, § 1, eff from and after passage (approved Apr. 22, 2015.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision, and Publication corrected a typographical error in Section 6 of ch. 587, Laws of 1997. In the last sentence of paragraph (26), the reference to "42 CAR" was changed to "42 CFR". The Joint Committee ratified the correction at the May 8, 1997 meeting of the Committee.

Section 1 of ch. 467, Laws of 1999, effective after its passage (approved March 25, 1995), amended this section. Section 2 of ch. 477, Laws of 1999, effective after its passage (approved March 29, 1999), Section 1 of ch. 495, Laws of 1999, effective July 1, 1999 and Section 1 of ch. 593, Laws of 1999, effective June 30, 1999, also amended this section. As set out above, this section reflects the language of all four amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of

Legislation ratified the integration of these amendments as consistent with the legislative intent at the April 28, 1999, meeting of the Committee.

Section 8 of ch. 301, Laws of 2000, effective from and after July 1, 1999, amended this section. Section 1 of ch. 328, Laws of 2000, effective from and after July 1, 2000, also amended this section. Section 1 of ch. 571, Laws of 2000, effective from and after its passage (approved May 20, 2000), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 571, Laws of 2000, pursuant to the terms of Sections 1 and 2 of ch. 571, which specifically incorporated and superseded the amendments made to this section by chs. 301 and 328.

Section 1 of ch. 305, Laws of 2001, effective from and after passage (approved February 27, 2001), amended this section. Section 1 of ch. 385, Laws of 2001, effective from and after passage (approved March 11, 2001), also amended this section. Section 1 of ch. 453, Laws of 2001, effective from and after June 30, 2001, also amended this section. Section 2 of ch. 594, Laws of 2001, effective from and after July 1, 2001, also amended this section. As set out above, this section reflects the language of Section 2 of ch. 594, Laws if 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 1 of ch. 304, Laws of 2002, eff from and after passage (approved March 6, 2002), amended this section. Section 1 of ch. 454, Laws of 2002, eff from and after passage (approved March 20, 2002), also amended this section. Section 1 of ch. 636B, Laws of 2002, eff from and after passage (approved April 12, 2002), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 636B, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 4 of ch. 552, Laws of 2007, effective from and after July 1, 2007 (approved April 20, 2007), amended this section. Section 2 of ch. 553, Laws of 2007, effective from and after passage (approved April 20, 2007), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 553, Laws of 2007, which contains language that specifically provides that it supersedes § 43-13-117, as amended by Laws of 2007, ch. 552.

Section 2 of Chapter 530, Laws of 2012, effective upon passage (approved May 17, 2012), amended this section. Section 13 of Chapter 524, Laws of 2012, effective upon passage (approved May 16, 2012), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 530, Laws of 2012, which contains language that specifically provides that it supersedes § 43-13-117 as amended by Laws of 2012, ch. 524.

Editor's Note — Chapter 118 of the Second Extraordinary Session of 2009 was effective on July 1, 2009, but the amendments to this section were contingent upon the effectuation of the hospital assessment provided for in Section 43-13-145(4). Section 43-13-145(4)(f) [in the first version of the section as it appeared in Laws of 2009, 2nd Ex Session, Ch. 118, § 3] provides that the hospital assessment will not take effect if the Centers for Medicare and Medicaid Services (CMS) does not approve the Division of Medicaid's 2009 Medicaid State Plan Amendment for its methodology for Disproportionate Share Hospital (DSH) and inpatient Medicare Upper Payment Limits (UPL) payments to hospitals. CMS approved the State Plan Amendment on March 9, 2010, and the hospital assessment then became effective, so the amendments to this section by Chapter 118 of the Second Extraordinary Session of 2009 became effective on March 9, 2010.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 1986, ch. 437, §§ 1, 2, eff from and after July 1, 1986, provide as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Health Services Reorganization Act of 1986.

"SECTION 2. All records, property and unexpended balances of appropriations, allocations or other funds of any agency abolished or affected by this act shall be transferred to the appropriate agency according to the merger of their functions under this act."

For a list of code sections affected by Laws of 1986, Chapter 437, see Statutory Tables Volume, Table B, Allocation of Acts of 1986.

Laws of 1993, ch. 388, § 7, effective July 1, 1993, provides as follows:

"SECTION 7. This act shall take effect and be in force from and after July 1, 1993, and shall be implemented after appropriate federal waivers have been obtained. However, subsections (2) and (5) of Section 1 of this act shall take effect and be in force from and after the passage of this act."

Former paragraph (A)(7)(b) relating to home health services reimbursement was repealed by its own terms on July 1, 1997.

Chapter 301 of Laws of 2000 was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Laws of 2000, ch. 571, § 2, provides as follows:

"SECTION 2. It is the intent of the Legislature that the amendments to Section 43-13-117, Mississippi Code of 1972, contained in House Bill No. 1280, 2000 Regular Session [ch. 571], shall supersede the amendments to this section contained in House Bill No. 1432, 2000 Regular Session [ch. 328]."

Laws of 2002, ch. 454, § 2, provides as follows:

"SECTION 2. Any contribution or transfer of funds to a state agency by a political subdivision or instrumentality of the state before March 20, 2002, which funds were used to match federal funds to provide services under paragraph (15) or (16) of Section 43-13-117, is ratified, approved and confirmed."

Chapter 636B of Laws of 2002 was Senate Bill 2189, 2002 Regular Session, and originally passed the House of Representatives and the Senate on April 2, 2002. The Governor vetoed Senate Bill 2189 on April 9, 2002. The veto was overridden by both the House of Representatives and the Senate on April 12, 2002.

Laws of 2002, ch. 636B, § 7, provides as follows:

"SECTION 7. Any transfer of funds to the Department of Mental Health by a political subdivision or instrumentality of the state before April 12, 2002, which funds were used to match federal funds to provide services under paragraph (29) of Section 43-13-117, is ratified, approved and confirmed."

Laws of 2002, 3rd Extraordinary Session, ch. 1, § 2, provides as follows:

"SECTION 2. The issuance of any permits by the State Board of Pharmacy in accordance with the provisions of Section 73-21-108 as it existed on June 30, 2001, during the period from July 1, 2001, until the effective date of Chapter 1, Third Extraordinary Session of 2002, are ratified, approved and confirmed.

"Any reimbursement payments for durable medical equipment services or medical supplies made by the Division of Medicaid to holders of permits issued by the State Board of Pharmacy in accordance with the provisions of Section 73-21-108 as it existed on June 30, 2001, during the period from July 1, 2001, until the effective date of Chapter 1, Third Extraordinary Session of 2002, are ratified, approved and confirmed; however, this subsection does not prevent or restrict the Division of Medicaid from exercising any of the authority granted under Section 43-13-121 with respect to any of those reimbursement payments."

Laws of 2003, ch. 556, § 6, provides as follows:

"SECTION 6. It is the intent of the Legislature that the Executive Director of the Division of Medicaid shall maintain the current services until such time as the 2004 Legislature convenes. This is not intended to affect any of the provisions in House Bill No. 897, 2003 Regular Session, or other cost saving measures that otherwise may be implemented."

Laws of 2006, ch. 303, § 1, as amended by Laws of 2007, ch. 412, § 1, and as amended by Laws of 2008, ch. 422, § 1, has been codified as § 43-13-119 at the direction of Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Laws of 2006, ch. 303, § 2, as amended by Laws of 2007, ch. 412, § 1, provides:

"SECTION 2. The division is authorized to seek approval from the centers for Medicare and Medicaid Services (CMS) for a waiver or grant to cover those individuals identified to receive services under this act, as allowed by federal law. The division is also authorized to explore other options for administering and providing services under this program, including, but not limited to, matching any available federal funds and/or making grants to nonprofit organizations. The division may study, but shall not implement without explicit statutory authorization during the 2008 Regular Session of the Legislature, the use of private provider funds for the continued operation of this program."

In (A)(54) there is a reference to "vulnerable adults." The "Vulnerable Adults Act" was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357 to change references to "vulnerable adult" to "vulnerable person."

Laws of 2012, ch. 530, § 5, provides:

"SECTION 5. (1) The Division of Medicaid shall develop proposals for the following:

"(a) The division shall develop a plan for the APR-DRG reimbursement methodology which increases such payments in order to reduce or eliminate Medicare Upper Payment Limits (UPL) program payments;

"(b) The division shall develop a plan to replace the existing hospital assessment provided in Section 43-13-145 with other possible revenue systems, including the possibility of a net inpatient revenue assessment;

"(c) The division shall develop a plan providing revisions to the current reimbursement methodology for prescription drugs.

"(d) The division shall develop a plan providing revisions to the current reimbursement methodology for nursing facility services.

"(2) The division shall not implement these plans, but shall submit the plans to the Public Health and Welfare Committee of the Senate and the Medicaid Committee of the House no later than October 15, 2012, including necessary legislative recommendations."

Amendment Notes — The 2014 amendment deleted "The division shall allow six (6) medically necessary emergency room visits per beneficiary per fiscal year" from the end in (A)(2)(a); substituted the current language for "[Deleted]" in (A)(4)(d); added the last sentence in (A)(6); substituted "July 1, 2016" for "July 1, 2014" in (A)(10)(f); in (A)(12), substituted "individuals with intellectual disabilities" for "the mentally retarded" in (a) and (b), and added (c); in (A)(18)(b), added "and may establish ... classes of hospitals," the sixth sentence, and "and, if the program ... for physicians" at the end; added the third and fourth sentences in (A)(19)(a); added the second sentence in (A)(23); made a minor stylistic change in (A)(44)(a); added (A)(57); substituted "individuals with intellectual disabilities" for "the mentally retarded" in (G); in (H), rewrote the introductory paragraph of (1), added the second sentence in (1)(h), and added (2) and (3), redesignating the remaining paragraphs; and substituted "July 1, 2016" for "July 1, 2014" in (K).

The 2015 amendment added the second paragraph of (A)(15); added the last sentence in (A)(18)(b); added (A)(18)(c)(i) through (v); in (H)(1), inserted "provider-sponsored health plan, or (h)" in the first sentence, and inserted "provider-sponsored health plans" in the second sentence, and substituted "subsection" for "paragraph" in the last sentence; in (H)(1)(b), added "for an emergency medical condition as defined by 42 US Code Section 1395dd" to the end of the first sentence, substituted "the retrospective review of the appropriateness of the determination ... prohibit prior authorization for nonemergency hospital admissions" for "prior authorization for nonemergency hospital visitation" in the last sentence; deleted former (c), which read: "Result in any reduction in Medicare Upper Payment Limits (UPL) payments to hospital providers in the aggregate because of the program"; and redesignated former (H)(1)(d) through (H)(1)(h) as present (H)(1)(c) through (H)(1)(g), and added "however, the division may approve use of innovative payment models that recognize .... to accept such alternative payment models" to the end; deleted former (H)(2) which read: "No later than December 31, 2015, the division shall develop and submit to the Senate Public Health Committee and the House Medicaid Committee a proposed plan outlining the advantages and disadvantages of inpatient hospital services being included in a managed care program, including any effect on UPL payments to hospitals and ways to offset any reductions that might occur as a result of changes to the program"; inserted "provider-sponsored health plans" in (H)(3) and (4); and extended the repealer provision from "July 1, 2016" to "June 30, 2018" in (K).

Cross References — Educational programs for nurse-midwives, see § 37-129-1.

Prescribed pediatric extended care centers, see § 41-121-1 et seq.

Institutions for the aged and infirm, see §§ 43-11-1 et seq.

Provision that certain funds of medicaid patients who are receiving services in long-term care facilities and who die intestate and without heirs shall be credited to the Division of Medicaid, see § 43-13-120.

Medical assistance to Vietnamese and Cambodian refugees, see § 43-13-121.

Provision granting the Division of Medicaid authority to establish reasonable fees, charges, and rates for medical services and drugs, subject to limitations imposed by this section, see § 43-13-121.

Provision of the Mississippi Vulnerable Persons Act to effect that a court shall not order the Division of Medicaid to provide custody, care, or maintenance of a vulnerable person who is not otherwise eligible for medical assistance under § 43-13-115 or services under this section, see § 43-47-21.

Provider-sponsored health plans, see §§ 83-5-601 et seq.

Federal Aspects — Titles XVIII and XIX of the Social Security Act appear as 42 USCS §§ 1395 through 1395ccc and 42 USCS §§ 1396 through 1396v, respectively.

Additional reimbursement to hospitals serving disproportionate share of low income patients under Federal Social Security Act, see 42 USCS § 1395ww (d)(5)(C)(i).

Section 1886(d)(5)(F) of the Federal Social Security Act, see 42 USCS § 1395ww.

Section 1902 (a)(30) of the Social Security Act appears as 42 USCS § 1396a.

Section 1903 of the Social Security Act, see 42 USCS § 1396b.

Section 1923 of the Social Security Act, see 42 USCS § 1396r-4.

Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

JUDICIAL DECISIONS

1. In general.

Pharmacy reimbursement rule promulgated by the Division of Medicaid (DOM), implementing a State Maximum Allowable Cost (SMAC) program for calculating the estimated acquisition cost (EAC) for certain generic drugs, ran afoul of Miss. Code Ann. § 43-13-117 because it altered the way in which Medicaid providers were reimbursed without prior legislative approval. Div. of Medicaid v. Miss. Indep. Pharms. Ass'n, 20 So. 3d 1236 (Miss. 2009).

Because the Mississippi Division of Medicaid's State Plan Amendment 2006-006 conflicted with the statutory requirement in Miss. Code Ann. § 43-13-117 that a private nursing facilities for the severely disabled be reimbursed as a separate category of nursing facility, the amendment was void and of no effect. Accordingly, the chancery court's decision which affirmed the DOM's decision was revered and the case was remanded. Miss. Methodist Hosp. & Rehab. Ctr., Inc. v. Miss. Div. of Medicaid, 21 So. 3d 600 (Miss. 2009).

Nursing home operator was not allowed to receive payment for corrected Medicaid billings after it discovered errors in its prior billings because the regulations allowing corrected patient assessments, required to be submitted to receive payment, only applied prospectively. Beverly Enters. v. State Div. of Medicaid, — So. 2d —, 2001 Miss. LEXIS 181 (Miss. July 19, 2001), opinion withdrawn by, substituted opinion at 808 So. 2d 939, 2002 Miss. LEXIS 51 (Miss. 2002).

To determine whether health care providers are entitled to bring private right of action under 42 USCS § 1983 to challenged adequacy of state's reimbursement rates for medical services provided under Medicaid program, court must look closely at precise statutory language, and examine what is required of state as a condition of receiving federal funds. Duties that are merely generalized are to be enforced by the Secretary, not by private individuals. The right must be unambiguously conferred by the statute. The two-prong test of Golden State Transit Corp. v. Los Angeles (1989) 493 U.S. 103, 107 L. Ed. 3d 420, 110 S. Ct. 444, still has force: (1) plaintiff must assert violation of a federal rights: the interest the plaintiff asserts must not be too vague and amorphous, and it must be examined whether the provision was intended to benefit the putative plaintiff. (2) Even when plaintiff shows a federal right, defendant may show that Congress specifically foreclosed a remedy under section 1983 by providing a comprehensive enforcement mechanism for protection of a federal right, the burden to demonstrate that Congress had expressly withdrawn such a remedy being on the defendant. Evelyn V. v. Kings County Hosp. Ctr., 819 F. Supp. 183 (E.D.N.Y. 1993).

Health care providers are entitled to sue under 42 USCS § 1983 to challenge adequacy of state's reimbursement rates for medical services provided under medicaid program. Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

ATTORNEY GENERAL OPINIONS

Adding providers of mental health services to State Medicaid Plan that are not specifically authorized in Section 43-13-117(16) could not be accomplished by relying on exception Section 43-13-117; such amendment would require statutory authority. Wetherbee Aug. 24, 1993, A.G. Op. #93-0536.

The language "any other cost containment measures on any program or programs authorized under the article to the extent allowed under federal law governing such program or programs," gives the Division of Medicaid the authority to reduce and/or adjust the amount, duration, and scope of Medicaid services provided by state statute that are deemed mandatory under federal Medicaid law, to the extent allowed under federal law; further, the Division of Medicaid may adjust income limits and/or discontinue any or all Medicaid eligibility categories provided by state statute that are deemed to be optional under federal Medicaid law. Lewis-Payton, Apr. 24, 2002, A.G. Op. #02-0234.

RESEARCH REFERENCES

ALR. Transsexual surgery as covered operation under state medical assistance program. 2 A.L.R.4th 775.

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

§ 43-13-117.1. Nursing facility services funds for certain nursing facility residents may be transferred to cover costs of services available through home- and community-based waiver programs.

It is the intent of the Legislature to expand access to Medicaid-funded home- and community-based services for eligible nursing facility residents who choose those services. The Executive Director of the Division of Medicaid is authorized to transfer funds allocated for nursing facility services for eligible residents to cover the cost of services available through the Independent Living Waiver, the Traumatic Brain Injury/Spinal Cord Injury Waiver, the Elderly and Disabled Waiver, and the Assisted Living Waiver programs when eligible residents choose those community services. The amount of funding transferred by the division shall be sufficient to cover the cost of home- and community-based waiver services for each eligible nursing facility residents who choose those services. The number of nursing facility residents who return to the community and home- and community-based waiver services shall not count against the total number of waiver slots for which the Legislature appropriates funding each year. Any funds remaining in the program when a former nursing facility resident ceases to participate in a home- and community-based waiver program under this provision shall be returned to nursing facility funding.

SOURCES: Laws, 2007, ch. 553, § 4, eff from and after July 1, 2007.

§ 43-13-117.2. Study on implementation of pilot program to provide chronic disease management of chronic obstructive pulmonary disease.

The Division of Medicaid is authorized and directed to study the feasibility of implementing a pilot program to provide chronic disease management of chronic obstructive pulmonary disease (COPD) using private sources of funding in an effort to reduce the financial and clinical burden of COPD illness upon the Medicaid program and the citizens of Mississippi. If a pilot program is deemed feasible, such a program shall be implemented and a report of findings and recommendations be prepared and provided to the Office of the Governor and the Chairmen of the House and Senate Public Health and Welfare Committees and the Chairman of the House Medicaid Committee in order to evaluate the effectiveness of the pilot program in reducing costs within the Medicaid program and in providing improved health and well-being of the affected patients.

SOURCES: Laws, 2007, ch. 553, § 5, eff from and after July 1, 2007.

§ 43-13-117.3. Repealed.

Repealed by Laws of 2015, ch. 473, § 3, effective July 1, 2015.

Editor's Note — Former § 43-13-117.3 provided for a study on the implementation of a pilot program to provide bariatric surgery in the morbidly obese as a treatment option.

§ 43-13-118. Records of provider participating in Medicaid program.

It shall be the duty of each provider participating in the medical assistance program to keep and maintain books, documents, and other records as prescribed by the division of Medicaid in substantiation of its claim for services rendered Medicaid recipients, and such books, documents, and other records shall be kept and maintained for a period of five (5) years or for whatever longer period as may be required or prescribed under federal or state statutes and shall be subject to audit by the division. The division shall be entitled to full recoupment of the amount it has paid any provider of medical service who has failed to keep or maintain records as required herein.

SOURCES: Laws, 1983, ch. 336, § 2; Laws, 1984, ch. 488, § 49; Laws, 1994, ch. 649, § 3, eff from and after July 1, 1994.

Cross References — Audit and inspection of health care provider's records, see § 43-13-229.

§ 43-13-119. Division of Medicaid to design and implement temporary program to provide nonemergency transportation to locations for dialysis services for certain persons; transportation providers; relationship to Medicaid program [Repealed effective July 1, 2016].

(1) The Division of Medicaid shall immediately design and implement a temporary program to provide nonemergency transportation to locations for necessary dialysis services for end stage renal disease patients who are sixty-five (65) years of age or older or are disabled as determined under Section 1614(a)(3) of the federal Social Security Act, as amended, whose income did not exceed one hundred thirty-five percent (135%) of the nonfarm official poverty level as defined by the Office of Management and Budget, and whose resources did not exceed those established by the division as of December 31, 2005, whose eligibility was covered under the former category of eligibility known as PLADs (Poverty Level Aged and Disabled).

(2) The transportation services under the program shall be provided by any reasonable provider, which may include (a) public entities or (b) private entities and individuals who are in the business of providing nonemergency transportation, including faith-based organizations, and the division shall reimburse those entities and individuals or faith-based organizations for providing the transportation services in accordance with a mutually agreed upon reimbursement schedule.

(3) The program shall be funded from monies that are appropriated or otherwise made available to the division. The funds shall be appropriated to

the division specifically to cover the cost of this program and shall not be a part of the division's regular appropriation for the operation of the federal-state Medicaid program.

(4) The program is a separate program that is not part of or connected to the Medicaid program, and the relationship of the division to the program is only as the administering agent.

(5) This section shall stand repealed on July 1, 2016.

SOURCES: Laws, 2006, ch. 303, § 1; Laws, 2007, ch. 412, § 1; Laws, 2008, ch. 422, § 1; Laws, 2010, ch. 498, § 3; Laws, 2013, 2nd Ex Sess, ch. 1, § 3; Laws, 2014, ch. 488, § 2, eff from and after July 1, 2014.

Editor's Note — A former § 43-13-119 [Codes, 1942, § 7290-40; Laws, 1969, Ex Sess, ch. 37, § 10], which gave Medicaid recipients the absolute right to choose and select any legally qualified supplier of drugs, services and care without restriction, was repealed by Laws of 1993, ch. 609, § 4, effective from and after passage (approved April 20, 1993).

This section was codified as Section 43-13-19 at the direction of Co-Counsel for the Joint Legislative Committee on Compilation Revision and Publication of Legislation.

Laws of 2006, ch. 303, § 2, as amended by laws of 2007, ch. 412, § 1 provides:

"SECTION 2. The division is authorized to seek approval from the centers for identified to receive services under this act, as allowed by federal law. The division is also authorized to explore other options for administering and providing services under this program, including, but not limited to, matching any available federal funds and/or making grants to nonprofit organizations. The division may study, but shall not implement without explicit statutory authorization during the 2008 Regular Session of the Legislature, the use of private provider funds for the continued operation of this program."

Amendment Notes — The 2014 amendment extended the repealer provision from "June 30, 2014" to "July 1, 2016" in (5).

Federal Aspects — Section 1614(a)(3) of the Social Security Act appears as 42 USCS § 1382c.

§ 43-13-120. Division of Medicaid deemed beneficiary of certain recipients who die intestate and without heirs.

(1) Any person who is a Medicaid recipient and is receiving medical assistance for services provided in a long-term care facility under the provisions of Section 43-13-117 from the Division of Medicaid in the Office of the Governor, who dies intestate and leaves no known heirs, shall have deemed, through his acceptance of such medical assistance, the Division of Medicaid as his beneficiary to all such funds in an amount not to exceed Two Hundred Fifty Dollars ($250.00) which are in his possession at the time of his death. Such funds, together with any accrued interest thereon, shall be reported by the long-term care facility to the State Treasurer in the manner provided in subsection (2).

(2) The report of such funds shall be verified, shall be on a form prescribed or approved by the Treasurer, and shall include (a) the name of the deceased person and his last known address prior to entering the long-term care facility; (b) the name and last known address of each person who may possess an interest in such funds; and (c) any other information which the Treasurer

prescribes by regulation as necessary for the administration of this section. The report shall be filed with the Treasurer prior to November 1 of each year in which the long-term care facility has provided services to a person or persons having funds to which this section applies.

(3) Within one hundred twenty (120) days from November 1 of each year in which a report is made pursuant to subsection (2), the Treasurer shall cause notice to be published in a newspaper having general circulation in the county of this state in which is located the last known address of the person or persons named in the report who may possess an interest in such funds, or if no such person is named in the report, in the county in which is located the last known address of the deceased person prior to entering the long-term care facility. If no address is given in the report or if the address is outside of this state, the notice shall be published in a newspaper having general circulation in the county in which the facility is located. The notice shall contain (a) the name of the deceased person; (b) his last known address prior to entering the facility; (c) the name and last known address of each person named in the report who may possess an interest in such funds; and (d) a statement that any person possessing an interest in such funds must make a claim therefor to the Treasurer within ninety (90) days after such publication date or the funds will become the property of the State of Mississippi. In any year in which the Treasurer publishes a notice of abandoned property under Section 89-12-27, the Treasurer may combine the notice required by this section with the notice of abandoned property. The cost to the Treasurer of publishing the notice required by this section shall be paid by the Division of Medicaid.

(4) Each long-term care facility that makes a report of funds of a deceased person under this section shall pay over and deliver such funds, together with any accrued interest thereon, to the Treasurer not later than ten (10) days after notice of such funds has been published by the Treasurer as provided in subsection (3). If a claim to such funds is not made by any person having an interest therein within ninety (90) days of the published notice, the Treasurer shall place such funds in the special account in the State Treasury to the credit of the "Governor's Office — Division of Medicaid" to be expended by the Division of Medicaid for the purposes provided under Mississippi Medicaid Law.

(5) This section shall not be applicable to any Medicaid patient in a long-term care facility of a state institution listed in Section 41-7-73, who has a personal deposit fund as provided for in Section 41-7-90.

SOURCES: Laws, 1985, ch. 403, § 1; Laws, 1986, ch. 437, § 4, eff from and after July 1, 1986.

Editor's Note — Laws, 1986, ch. 437, §§ 1, 2, eff from and after July 1, 1986, provide as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Health Services Reorganization Act of 1986.

"SECTION 2. All records, property and unexpended balances of appropriations, allocations or other funds of any agency abolished or affected by this act shall be transferred to the appropriate agency according to the merger of their functions under this act."

For a list of code sections affected by Laws, 1986, Chapter 437, see Statutory Tables Volume, Table B, Allocation of Acts of 1986.

Cross References — Provision that this section shall not apply to any Medicaid patient in a state institution listed in § 41-7-73, see § 41-7-90.

Inapplicability of provisions of this chapter to any person who owns property subject to the provisions of this section, see § 89-12-53.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Welfare Laws § 40.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 268, 269.

§ 43-13-121. Authority to administer article.

(1) The division shall administer the Medicaid program under the provisions of this article, and may do the following:

(a) Adopt and promulgate reasonable rules, regulations and standards, with approval of the Governor, and in accordance with the Administrative Procedures Law, Section 25-43-1.101 et seq.:

(i) Establishing methods and procedures as may be necessary for the proper and efficient administration of this article;

(ii) Providing Medicaid to all qualified recipients under the provisions of this article as the division may determine and within the limits of appropriated funds;

(iii) Establishing reasonable fees, charges and rates for medical services and drugs; in doing so, the division shall fix all of those fees, charges and rates at the minimum levels absolutely necessary to provide the medical assistance authorized by this article, and shall not change any of those fees, charges or rates except as may be authorized in Section 43-13-117;

(iv) Providing for fair and impartial hearings;

(v) Providing safeguards for preserving the confidentiality of records; and

(vi) For detecting and processing fraudulent practices and abuses of the program;

(b) Receive and expend state, federal and other funds in accordance with court judgments or settlements and agreements between the State of Mississippi and the federal government, the rules and regulations promulgated by the division, with the approval of the Governor, and within the limitations and restrictions of this article and within the limits of funds available for that purpose;

(c) Subject to the limits imposed by this article, to submit a Medicaid plan to the United States Department of Health and Human Services for approval under the provisions of the federal Social Security Act, to act for the state in making negotiations relative to the submission and approval of that plan, to make such arrangements, not inconsistent with the law, as may be required by or under federal law to obtain and retain that approval and to secure for the state the benefits of the provisions of that law.

No agreements, specifically including the general plan for the operation of the Medicaid program in this state, shall be made by and between the division and the United States Department of Health and Human Services unless the Attorney General of the State of Mississippi has reviewed the agreements, specifically including the operational plan, and has certified in writing to the Governor and to the executive director of the division that the agreements, including the plan of operation, have been drawn strictly in accordance with the terms and requirements of this article;

(d) In accordance with the purposes and intent of this article and in compliance with its provisions, provide for aged persons otherwise eligible for the benefits provided under Title XVIII of the federal Social Security Act by expenditure of funds available for those purposes;

(e) To make reports to the United States Department of Health and Human Services as from time to time may be required by that federal department and to the Mississippi Legislature as provided in this section;

(f) Define and determine the scope, duration and amount of Medicaid that may be provided in accordance with this article and establish priorities therefor in conformity with this article;

(g) Cooperate and contract with other state agencies for the purpose of coordinating Medicaid provided under this article and eliminating duplication and inefficiency in the Medicaid program;

(h) Adopt and use an official seal of the division;

(i) Sue in its own name on behalf of the State of Mississippi and employ legal counsel on a contingency basis with the approval of the Attorney General;

(j) To recover any and all payments incorrectly made by the division to a recipient or provider from the recipient or provider receiving the payments. The division shall be authorized to collect any overpayments to providers sixty (60) days after the conclusion of any administrative appeal unless the matter is appealed to a court of proper jurisdiction and bond is posted. Any appeal filed after July 1, 2015, shall be to the Chancery Court of the First Judicial District of Hinds County, Mississippi, within sixty (60) days after the date that the division has notified the provider by certified mail sent to the proper address of the provider on file with the division and the provider has signed for the certified mail notice, or sixty (60) days after the date of the final decision if the provider does not sign for the certified mail notice. To recover those payments, the division may use the following methods, in addition to any other methods available to the division:

(i) The division shall report to the Department of Revenue the name of any current or former Medicaid recipient who has received medical services rendered during a period of established Medicaid ineligibility and who has not reimbursed the division for the related medical service payment(s). The Department of Revenue shall withhold from the state tax refund of the individual, and pay to the division, the amount of the payment(s) for medical services rendered to the ineligible individual that have not been reimbursed to the division for the related medical service payment(s).

(ii) The division shall report to the Department of Revenue the name of any Medicaid provider to whom payments were incorrectly made that the division has not been able to recover by other methods available to the division. The Department of Revenue shall withhold from the state tax refund of the provider, and pay to the division, the amount of the payments that were incorrectly made to the provider that have not been recovered by other available methods;

(k) To recover any and all payments by the division fraudulently obtained by a recipient or provider. Additionally, if recovery of any payments fraudulently obtained by a recipient or provider is made in any court, then, upon motion of the Governor, the judge of the court may award twice the payments recovered as damages;

(*l*) Have full, complete and plenary power and authority to conduct such investigations as it may deem necessary and requisite of alleged or suspected violations or abuses of the provisions of this article or of the regulations adopted under this article, including, but not limited to, fraudulent or unlawful act or deed by applicants for Medicaid or other benefits, or payments made to any person, firm or corporation under the terms, conditions and authority of this article, to suspend or disqualify any provider of services, applicant or recipient for gross abuse, fraudulent or unlawful acts for such periods, including permanently, and under such conditions as the division deems proper and just, including the imposition of a legal rate of interest on the amount improperly or incorrectly paid. Recipients who are found to have misused or abused Medicaid benefits may be locked into one (1) physician and/or one (1) pharmacy of the recipient's choice for a reasonable amount of time in order to educate and promote appropriate use of medical services, in accordance with federal regulations. If an administrative hearing becomes necessary, the division may, if the provider does not succeed in his or her defense, tax the costs of the administrative hearing, including the costs of the court reporter or stenographer and transcript, to the provider. The convictions of a recipient or a provider in a state or federal court for abuse, fraudulent or unlawful acts under this chapter shall constitute an automatic disqualification of the recipient or automatic disqualification of the provider from participation under the Medicaid program.

A conviction, for the purposes of this chapter, shall include a judgment entered on a plea of nolo contendere or a nonadjudicated guilty plea and shall have the same force as a judgment entered pursuant to a guilty plea or a conviction following trial. A certified copy of the judgment of the court of competent jurisdiction of the conviction shall constitute prima facie evidence of the conviction for disqualification purposes;

(m) Establish and provide such methods of administration as may be necessary for the proper and efficient operation of the Medicaid program, fully utilizing computer equipment as may be necessary to oversee and control all current expenditures for purposes of this article, and to closely monitor and supervise all recipient payments and vendors rendering services under this article. Notwithstanding any other provision of state law, the division is authorized to enter into a ten-year contract(s) with a vendor(s) to provide services described in this paragraph (m). Notwithstanding any provision of law to the contrary, the division is authorized to extend its Medicaid Management Information Systems, including all related components and services, and Decision Support System, including all related components and services, contracts expiring on June 30, 2015, for a period not to exceed five (5) years without complying with the requirements provided in Section 25-9-120 and the Personal Service Contract Review Board procurement regulations;

(n) To cooperate and contract with the federal government for the purpose of providing Medicaid to Vietnamese and Cambodian refugees, under the provisions of Public Law 94-23 and Public Law 94-24, including any amendments to those laws, only to the extent that the Medicaid assistance and the administrative cost related thereto are one hundred percent (100%) reimbursable by the federal government. For the purposes of Section 43-13-117, persons receiving Medicaid under Public Law 94-23 and Public Law 94-24, including any amendments to those laws, shall not be considered a new group or category of recipient; and

(o) The division shall impose penalties upon Medicaid only, Title XIX participating long-term care facilities found to be in noncompliance with division and certification standards in accordance with federal and state regulations, including interest at the same rate calculated by the United States Department of Health and Human Services and/or the Centers for Medicare and Medicaid Services (CMS) under federal regulations.

(2) The division also shall exercise such additional powers and perform such other duties as may be conferred upon the division by act of the Legislature.

(3) The division, and the State Department of Health as the agency for licensure of health care facilities and certification and inspection for the Medicaid and/or Medicare programs, shall contract for or otherwise provide for the consolidation of on-site inspections of health care facilities that are necessitated by the respective programs and functions of the division and the department.

(4) The division and its hearing officers shall have power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths to and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law that may be necessary to enable them effectively to discharge the duties of their office. In compelling the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions, as authorized by this section, the division or its hearing officers may designate an individual

employed by the division or some other suitable person to execute and return that process, whose action in executing and returning that process shall be as lawful as if done by the sheriff or some other proper officer authorized to execute and return process in the county where the witness may reside. In carrying out the investigatory powers under the provisions of this article, the executive director or other designated person or persons may examine, obtain, copy or reproduce the books, papers, documents, medical charts, prescriptions and other records relating to medical care and services furnished by the provider to a recipient or designated recipients of Medicaid services under investigation. In the absence of the voluntary submission of the books, papers, documents, medical charts, prescriptions and other records, the Governor, the executive director, or other designated person may issue and serve subpoenas instantly upon the provider, his or her agent, servant or employee for the production of the books, papers, documents, medical charts, prescriptions or other records during an audit or investigation of the provider. If any provider or his or her agent, servant or employee refuses to produce the records after being duly subpoenaed, the executive director may certify those facts and institute contempt proceedings in the manner, time and place as authorized by law for administrative proceedings. As an additional remedy, the division may recover all amounts paid to the provider covering the period of the audit or investigation, inclusive of a legal rate of interest and a reasonable attorney's fee and costs of court if suit becomes necessary. Division staff shall have immediate access to the provider's physical location, facilities, records, documents, books, and any other records relating to medical care and services rendered to recipients during regular business hours.

(5) If any person in proceedings before the division disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the hearing, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the executive director shall certify the facts to any court having jurisdiction in the place in which it is sitting, and the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and if the evidence so warrants, punish that person in the same manner and to the same extent as for a contempt committed before the court, or commit that person upon the same condition as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

(6) In suspending or terminating any provider from participation in the Medicaid program, the division shall preclude the provider from submitting claims for payment, either personally or through any clinic, group, corporation or other association to the division or its fiscal agents for any services or supplies provided under the Medicaid program except for those services or supplies provided before the suspension or termination. No clinic, group, corporation or other association that is a provider of services shall submit claims for payment to the division or its fiscal agents for any services or

supplies provided by a person within that organization who has been suspended or terminated from participation in the Medicaid program except for those services or supplies provided before the suspension or termination. When this provision is violated by a provider of services that is a clinic, group, corporation or other association, the division may suspend or terminate that organization from participation. Suspension may be applied by the division to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The violation, failure or inadequacy of performance may be imputed to a person with whom the provider is affiliated where that conduct was accomplished within the course of his or her official duty or was effectuated by him or her with the knowledge or approval of that person.

(7) The division may deny or revoke enrollment in the Medicaid program to a provider if any of the following are found to be applicable to the provider, his or her agent, a managing employee or any person having an ownership interest equal to five percent (5%) or greater in the provider:

(a) Failure to truthfully or fully disclose any and all information required, or the concealment of any and all information required, on a claim, a provider application or a provider agreement, or the making of a false or misleading statement to the division relative to the Medicaid program.

(b) Previous or current exclusion, suspension, termination from or the involuntary withdrawing from participation in the Medicaid program, any other state's Medicaid program, Medicare or any other public or private health or health insurance program. If the division ascertains that a provider has been convicted of a felony under federal or state law for an offense that the division determines is detrimental to the best interest of the program or of Medicaid beneficiaries, the division may refuse to enter into an agreement with that provider, or may terminate or refuse to renew an existing agreement.

(c) Conviction under federal or state law of a criminal offense relating to the delivery of any goods, services or supplies, including the performance of management or administrative services relating to the delivery of the goods, services or supplies, under the Medicaid program, any other state's Medicaid program, Medicare or any other public or private health or health insurance program.

(d) Conviction under federal or state law of a criminal offense relating to the neglect or abuse of a patient in connection with the delivery of any goods, services or supplies.

(e) Conviction under federal or state law of a criminal offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance.

(f) Conviction under federal or state law of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct.

(g) Conviction under federal or state law of a criminal offense punishable by imprisonment of a year or more that involves moral turpitude, or acts against the elderly, children or infirm.

(h) Conviction under federal or state law of a criminal offense in connection with the interference or obstruction of any investigation into any criminal offense listed in paragraphs (c) through (i) of this subsection.

(i) Sanction for a violation of federal or state laws or rules relative to the Medicaid program, any other state's Medicaid program, Medicare or any other public health care or health insurance program.

(j) Revocation of license or certification.

(k) Failure to pay recovery properly assessed or pursuant to an approved repayment schedule under the Medicaid program.

(*l*) Failure to meet any condition of enrollment.

SOURCES: Codes, 1942, § 7290-41; Laws, 1969, Ex Sess, ch. 37, § 11; Laws, 1976, ch. 317, § 2; Laws, 1978, ch. 421, § 1; Laws, 1983, ch. 336 § 1; Laws, 1984, ch. 488, § 50; Laws, 1986, ch. 437, § 5; Laws, 1994, ch. 649, § 4; Laws, 1995, ch. 614, § 3; Laws, 2000, ch. 301, § 9; Laws, 2001, ch. 594, § 3; Laws, 2002, ch. 636B, § 2; Laws, 2004, ch. 593, § 4; Laws, 2012, ch. 530, § 3; Laws, 2014, ch. 488, § 3; Laws, 2015, ch. 321, § 1; Laws, 2015, ch. 473, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 2 of Chapter 473, Laws of 2015, effective from and after July 1, 2015 (approved April 22, 2015), amended this section. Section 1 of Chapter 321, Laws of 2015, effective upon passage (approved March 13, 2015), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 473, Laws of 2015, which contains language that specifically provides that it supersedes § 43-13-121 as amended by Laws of 2015, ch. 321.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 1986, ch. 437, §§ 1, 2, eff from and after July 1, 1986, provide as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Health Services Reorganization Act of 1986.

"SECTION 2. All records, property and unexpended balances of appropriations, allocations or other funds of any agency abolished or affected by this act shall be transferred to the appropriate agency according to the merger of their functions under this act."

For a list of code sections affected by Laws of 1986, Chapter 437, see the Statutory Tables Volume, Table B, Allocation of Acts of 1986.

Chapter 301 of Laws of 2000, was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Chapter 636B of Laws of 2002 was Senate Bill 2189, 2002 Regular Session, and originally passed the House of Representatives and the Senate on April 2, 2002. The Governor vetoed Senate Bill 2189 on April 9, 2002. The veto was overridden by both the House of Representatives and the Senate on April 12, 2002.

Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq., referred to in subsection (1)(a) of this section, shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Laws of 2012, ch. 530, § 5, provides:

"SECTION 5. (1) The Division of Medicaid shall develop proposals for the following:

"(a) The division shall develop a plan for the APR-DRG reimbursement methodology which increases such payments in order to reduce or eliminate Medicare Upper Payment Limits (UPL) program payments;

"(b) The division shall develop a plan to replace the existing hospital assessment provided in Section 43-13-145 with other possible revenue systems, including the possibility of a net inpatient revenue assessment;

"(c) The division shall develop a plan providing revisions to the current reimbursement methodology for prescription drugs.

"(d) The division shall develop a plan providing revisions to the current reimbursement methodology for nursing facility services.

"(2) The division shall not implement these plans, but shall submit the plans to the Public Health and Welfare Committee of the Senate and the Medicaid Committee of the House no later than October 15, 2012, including necessary legislative recommendations."

Laws of 2014, ch. 488, § 7 provides:

"SECTION 7. Not later than December 15, 2014, the Division of Medicaid shall prepare and deliver a report to the Chairmen of the Senate Public Health and Welfare Committee and the House Medicaid Committee on the impact of referrals by physicians for advanced imaging services using equipment owned in full or in part by the referring physician. The report shall include data on referral patterns that may indicate fraud or abuse."

Amendment Notes — The 2014 amendment inserted the second to last sentence in (1)(j) and added the last sentence in (1)(m).

The first 2015 amendment (ch. 321), effective March 13, 2015, inserted "the First Judicial District of" near the end of the third sentence of (1)(j); in the last sentence of (1)(m), deleted "Effective July 1, 2014, and" from the beginning of the sentence, and substituted "Medicaid Management Information Systems, including all related components and services, and Decision Support System, including all related components and services" for "Fiscal Agent and Eligibility Determination System," "June 30, 2015" for "July 1, 2014," and "five (5) years" for "three (3) years."

The second 2015 amendment (ch. 473), effective July 1, 2015, in (1)(j), substituted "sixty (60) days" for "thirty (30) days" in the second sentence, and rewrote the third sentence, which read: "Any appeal filed after July 1, 2014, shall be to the Chancery Court of Hinds County, Mississippi."

Cross References — Agency adoption of rules describing its organization and rules of practice, see § 24-43-5.

Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Federal Aspects — Public Law 94-23, see 22 USCS § 2601 note.

Social Security Act, see 42 USCS §§ 301 et seq.

Title XVIII of the Social Security Act, see 42 USCS §§ 1395 et seq.

Medicaid (Title XIX of the Social Security Act), see 42 USCS §§ 1396 et seq.

JUDICIAL DECISIONS

1. In general.

To determine whether health care providers are entitled to bring private right of action under 42 USCS § 1983 to challenged adequacy of state's reimbursement rates for medical services provided under Medicaid program, court must look closely at precise statutory language, and examine what is required of state as a condition of receiving federal funds. Duties that are merely generalized are to be enforced by the Secretary, not by private individuals. The right must be unambiguously conferred by the statute. The two-prong test of Golden State Transit Corp. v. Los Angeles (1989) 493 U.S. 103, 107 L. Ed. 3d 420, 110 S. Ct. 444, still has force: (1) plaintiff must assert violation of a federal rights: the interest the plaintiff asserts must not be too vague and amorphous, and it must be examined whether the provision was intended to benefit the putative plaintiff.

(2) Even when plaintiff shows a federal right, defendant may show that Congress specifically foreclosed a remedy under section 1983 by providing a comprehensive enforcement mechanism for protection of a federal right, the burden to demonstrate that Congress had expressly withdrawn such a remedy being on the defendant. Evelyn V. v. Kings County Hosp. Ctr., 819 F. Supp. 183 (E.D.N.Y. 1993).

Health care providers are entitled to sue under 42 USCS § 1983 to challenge adequacy of state's reimbursement rates for medical services provided under medicaid program. Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

RESEARCH REFERENCES

ALR. Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 20 A.L.R.4th 1166.

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

§ 43-13-122. Division authorized to apply for federal, private and public waivers, grants and contributions; implementation of integrated case-mix payment and quality monitoring system.

(1) The division is authorize to apply to the Center for Medicare and Medicaid Services of the United States Department of Health and Human Services for waivers and research and demonstration grants.

(2) The division is further authorized to accept and expend any grants, donations or contributions from any public or private organization together with any additional federal matching funds that may accrue and including, but not limited to, one hundred percent (100%) federal grant funds or funds from any governmental entity or instrumentality thereof in furthering the purposes and objectives of the Mississippi Medicaid program, provided that such receipts and expenditures are reported and otherwise handled in accordance with the General Fund Stabilization Act. The Department of Finance and Administration is authorized to transfer monies to the division from special funds in the State Treasury in amounts not exceeding the amounts authorized in the appropriation to the division.

SOURCES: Laws, 1989, ch. 527, § 6; Laws, 1990, ch. 548, § 3; Laws, 1991, ch. 612, § 3; Laws, 1993, ch. 609, § 5; Laws, 1994, ch. 649, § 5; Laws, 1995, ch. 614, § 4; Laws, 1996, ch. 518, § 2; Laws, 2000, ch. 301, § 10; Laws, 2003, ch. 543, § 5, eff from and after passage (approved Apr. 21, 2003.)

Editor's Note — Chapter 301 of Laws of 2000 was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

§ 43-13-123. Methods of providing for payment of claims.

The determination of the method of providing payment of claims under this article shall be made by the division, with approval of the Governor, which methods may be:

(a) By contract with insurance companies licensed to do business in the State of Mississippi or with nonprofit hospital service corporations, medical or dental service corporations, authorized to do business in Mississippi to underwrite on an insured premium approach, such medical assistance benefits as may be available, and any carrier selected under the provisions of this article is expressly authorized and empowered to undertake the performance of the requirements of that contract.

(b) By contract with an insurance company licensed to do business in the State of Mississippi or with nonprofit hospital service, medical or dental service organizations, or other organizations including data processing companies, authorized to do business in Mississippi to act as fiscal agent.

The division shall obtain services to be provided under either of the above-described provisions in accordance with the Personal Service Contract Review Board Procurement Regulations.

The authorization of the foregoing methods shall not preclude other methods of providing payment of claims through direct operation of the program by the state or its agencies.

SOURCES: Codes, 1942, § 7290-42; Laws, 1969, Ex Sess, ch. 37, § 12; Laws, 1978, ch. 489, § 3; Laws, 1984, ch. 488, § 51; Laws, 2002, ch. 636B, § 3, eff from and after passage (approved Apr. 12, 2002.)

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Chapter 636B of Laws of 2002 was Senate Bill 2189, 2002 Regular Session, and originally passed the House of Representatives and the Senate on April 2, 2002. The Governor vetoed Senate Bill 2189 on April 9, 2002. The veto was overridden by both the House of Representatives and the Senate on April 12, 2002.

Cross References — Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Provisions relative to third party liability for medical payments and transmission of information regarding such liability to the Division of Medicaid, see Article 7 of this chapter (§§ 43-13-301 et seq).

JUDICIAL DECISIONS

1. In general.

To determine whether health care providers are entitled to bring private right of action under 42 USCS § 1983 to challenged adequacy of state's reimbursement rates for medical services provided under Medicaid program, court must look closely at precise statutory language, and examine what is required of state as a condition of receiving federal funds. Duties that are merely generalized are to be enforced by the Secretary, not by private individuals. Right must be unambiguously conferred by the statute. The two-prong test of

Golden State Transit Corp. v. Los Angeles (1989) 493 U.S. 103, 107 L. Ed. 3d 420, 110 S. Ct. 444, still has force: (1) plaintiff must assert violation of a federal rights: the interest the plaintiff asserts must not be too vague and amorphous, and it must be examined whether the provision was intended to benefit the putative plaintiff. (2) Even when plaintiff shows a federal right, defendant may show that Congress specifically foreclosed a remedy under section 1983 by providing a comprehensive enforcement mechanism for protection of a federal right, the burden to demonstrate that Congress had expressly withdrawn such a remedy being on the defendant. Evelyn V. v. Kings County Hosp. Ctr., 819 F. Supp. 183 (E.D.N.Y. 1993).

Health care providers are entitled to sue under 42 USCS § 1983 to challenge adequacy of state's reimbursement rates for medical services provided under medicaid program. Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 110 S. Ct. 2510, 110 L. Ed. 2d 455 (1990).

§ 43-13-125. Recovery of Medicaid payments from third parties; compromise or settlement of claims; plaintiff's recovery of medical expenses as special damages; disposition of funds received.

(1) If Medicaid is provided to a recipient under this article for injuries, disease or sickness caused under circumstances creating a cause of action in favor of the recipient against any person, firm, corporation, political subdivision or other state agency, then the division shall be entitled to recover the proceeds that may result from the exercise of any rights of recovery that the recipient may have against any such person, firm, corporation, political subdivision or other state agency, to the extent of the Division of Medicaid's interest on behalf of the recipient. The recipient shall execute and deliver instruments and papers to do whatever is necessary to secure those rights and shall do nothing after Medicaid is provided to prejudice the subrogation rights of the division. Court orders or agreements for reimbursement of Medicaid's interest shall direct those payments to the Division of Medicaid, which shall be authorized to endorse any and all, including, but not limited to, multipayee checks, drafts, money orders, or other negotiable instruments representing Medicaid payment recoveries that are received. In accordance with Section 43-13-305, endorsement of multipayee checks, drafts, money orders or other negotiable instruments by the Division of Medicaid shall be deemed endorsed by the recipient. All payments must be remitted to the division within sixty (60) days from the date of a settlement or the entry of a final judgment; failure to do so hereby authorizes the division to assert its rights under Sections 43-13-307 and 43-13-315, plus interest.

The division, with the approval of the Governor, may compromise or settle any such claim and execute a release of any claim it has by virtue of this section at the division's sole discretion. Nothing in this section shall be construed to require the Division of Medicaid to compromise any such claim.

(2) The acceptance of Medicaid under this article or the making of a claim under this article shall not affect the right of a recipient or his or her legal representative to recover Medicaid's interest as an element of damages in any action at law; however, a copy of the pleadings shall be certified to the division at the time of the institution of suit, and proof of that notice shall be filed of

record in that action. The division may, at any time before the trial on the facts, join in that action or may intervene in that action. Any amount recovered by a recipient or his or her legal representative shall be applied as follows:

(a) The reasonable costs of the collection, including attorney's fees, as approved and allowed by the court in which that action is pending, or in case of settlement without suit, by the legal representative of the division;

(b) The amount of Medicaid's interest on behalf of the recipient; or such amount as may be arrived at by the legal representative of the division and the recipient's attorney; and

(c) Any excess shall be awarded to the recipient.

(3) No compromise of any claim by the recipient or his or her legal representative shall be binding upon or affect the rights of the division against the third party unless the division, with the approval of the Governor, has entered into the compromise in writing. The recipient or his or her legal representative maintain the absolute duty to notify the division of the institution of legal proceedings, and the third party and his or her insurer maintain the absolute duty to notify the division of a proposed compromise for which the division has an interest. The aforementioned absolute duties may not be delegated or assigned by contract or otherwise. Any compromise effected by the recipient or his or her legal representative with the third party in the absence of advance notification to and approved by the division shall constitute conclusive evidence of the liability of the third party, and the division, in litigating its claim against the third party, shall be required only to prove the amount and correctness of its claim relating to the injury, disease or sickness. If the recipient or his or her legal representative fails to notify the division of the institution of legal proceedings against a third party for which the division has a cause of action, the facts relating to negligence and the liability of the third party, if judgment is rendered for the recipient, shall constitute conclusive evidence of liability in a subsequent action maintained by the division and only the amount and correctness of the division's claim relating to injuries, disease or sickness shall be tried before the court. The division shall be authorized in bringing that action against the third party and his or her insurer jointly or against the insurer alone.

(4) Nothing in this section shall be construed to diminish or otherwise restrict the subrogation rights of the Division of Medicaid against a third party for Medicaid provided by the Division of Medicaid to the recipient as a result of injuries, disease or sickness caused under circumstances creating a cause of action in favor of the recipient against such a third party.

(5) Any amounts recovered by the division under this section shall, by the division, be placed to the credit of the funds appropriated for benefits under this article proportionate to the amounts provided by the state and federal governments respectively.

SOURCES: Codes, 1942, § 7290-43; Laws, 1969, Ex Sess, ch. 37, § 13; Laws, 1979, ch. 326; Laws, 1984, ch. 488, § 52; Laws, 1993, ch. 609, § 6; Laws, 2000, ch. 301, § 11; Laws, 2004, ch. 593, § 5; Laws, 2014, ch. 488, § 4, eff from and after July 1, 2014.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Chapter 301 of Laws of 2000, was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Amendment Notes — The 2014 amendment, in the first paragraph of (1), substituted "firm, corporation, political subdivision or other state agency" for "firm or corporation" twice in the first sentence and added the last sentence; in the second paragraph of (1), added "at the division's sole discretion" to the first sentence and added the second sentence; in (2)(b), deleted "pro rata" following "on behalf of the recipient; or such" near the beginning and "or as set by the court having jurisdiction" following "and the recipient's attorney" near the end; in (3), inserted "in writing" to the end of the first sentence and inserted the second and third sentences.

Cross References — Provision creating assignment rights in the Division of Medicaid upon its payment of medical expenses, see § 43-13-305.

Provision that an applicant or recipient who refuses to cooperate with the Division with respect to a claim against a third party under this section shall be ineligible for Medicaid benefits, see § 43-13-307.

Provisions relative to third party liability for medical payments and transmission of information regarding such liability to the Division of Medicaid, see Article 7 of this chapter (§§ 43-13-301 et seq).

JUDICIAL DECISIONS

1. In general.

Medicaid payments are subject to the collateral source rule; a defendant hospital did not get a break on damages when it caused permanent injuries to a poor person. Brandon HMA, Inc. v. Bradshaw, 809 So. 2d 611 (Miss. 2001).

Although Medicaid Commission is entitled to intervene in medical malpractice action to recover for payment of medical expenses, Commission is not entitled to participate in actual trial where defense counsel has offered to stipulate amount due Commission in event of recovery. Reikes v. Martin, 471 So. 2d 385 (Miss. 1985).

Statute clearly gave Medicaid Commission the exclusive right to make claim for or bring suit for sums paid by it for recipient's injuries in an auto accident, and the recipient could not recover those sums in her suit for damages. Adams v. Taylor, 325 So. 2d 912 (Miss. 1976).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 887, December 1979.

§ 43-13-126. Health insurers required to provide certain information to Division of Medicaid, accept Division's right of recovery and not deny claims submitted by Division on the basis of certain errors as condition of doing business in Mississippi.

As a condition of doing business in the state, health insurers, including self-insured plans, group health plans (as defined in Section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, are required to:

(a) Provide, with respect to individuals who are eligible for, or are provided, medical assistance under the state plan, upon the request of the Division of Medicaid, information to determine during what period the individual or their spouses or their dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address and identifying number of the plan) in a manner prescribed by the Secretary of the Department of Health and Human Services;

(b) Accept the Division of Medicaid's right of recovery and the assignment to the division of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the state plan;

(c) Respond to any inquiry by the Division of Medicaid regarding a claim for payment for any health care item or service that is submitted not later than three (3) years after the date of the provision of that health care item or service; and

(d) Agree not to deny a claim submitted by the Division of Medicaid solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:

(i) The claim is submitted by the division within the three-year period beginning on the date on which the item or service was furnished; and

(ii) Any action by the division to enforce its rights with respect to the claim is begun within six (6) years of the division's submission of the claim.

SOURCES: Laws, 2007, ch. 553, § 3, eff from and after July 1, 2007.

Federal Aspects — Section 607(1) of the Employee Retirement Income Security Act of 1974 is codified as 29 USCS § 1167(1).

§ 43-13-127. Reports and recommendations required of Division of Medicaid.

(1) Within sixty (60) days after the end of each fiscal year and at each regular session of the Legislature, the division shall make and publish a report

to the Governor and to the Legislature, showing for the period of time covered the following:

(a) The total number of recipients;

(b) The total amount paid for medical assistance and care under this article;

(c) The total number of applications;

(d) The number of applications approved;

(e) The number of applications denied;

(f) The amount expended for administration of the provisions of this article;

(g) The amount of money received from the federal government, if any;

(h) The amount of money recovered by reason of collections from third persons by reason of assignment or subrogation, and the disposition of the same;

(i) The actions and activities of the division in detecting and investigating suspected or alleged fraudulent practices, violations and abuses of the program; and

(j) Any recommendations it may have as to expanding, enlarging, limiting or restricting the eligibility of persons covered by this article or services provided by this article, to make more effective the basic purposes of this article; to eliminate or curtail fraudulent practices and inequities in the plan or administration thereof; and to continue to participate in receiving federal funds for the furnishing of medical assistance under Title XIX of the Social Security Act or other federal law.

(2) In addition to the reports required by subsection (1) of this section, the division shall submit a report each month to the Chairmen of the Public Health and Welfare Committees of the Senate and the House of Representatives and to the Joint Legislative Budget Committee that contains the information specified in each paragraph of subsection (1) for the preceding month.

SOURCES: Codes, 1942, § 7290-44; Laws, 1969, Ex Sess, ch. 37, § 14; Laws, 1972, ch. 306, § 1; Laws, 1984, ch. 488, § 53; Laws, 1990, ch. 548, § 4; Laws, 2002, ch. 636B, § 4, eff from and after passage (approved Apr. 12, 2002.)

Editor's Note — Chapter 636B of Laws of 2002, was Senate Bill 2189, 2002 Regular Session, and originally passed the House of Representatives and the Senate on April 2, 2002. The Governor vetoed Senate Bill 2189 on April 9, 2002. The veto was overridden by both the House of Representatives and the Senate on April 12, 2002.

Cross References — Disclosure of records of disbursement and payment of welfare assistance, see § 43-1-19.

Federal Aspects — Title XIX of the Social Security Act, see 42 USCS §§ 1396 et seq.

§ 43-13-129. Misrepresentation by applicant for benefits or by provider of services; penalty.

Any person making application for benefits under this article for himself or for another person, and any provider of services, who knowingly makes a false statement or false representation or fails to disclose a material fact to obtain or increase any benefit or payment under this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars ($500.00) or imprisoned not to exceed one (1) year, or by both such fine and imprisonment. Each false statement or false representation or failure to disclose a material fact shall constitute a separate offense. This section shall not prohibit prosecution under any other criminal statutes of this state or the United States.

SOURCES: Codes, 1942, § 7290-45; Laws, 1969, Ex Sess, ch. 37, § 15, eff from and after passage (approved October 10, 1969).

Cross References — Recovery of payments fraudulently obtained by a recipient or provider, see § 43-13-121.

Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 43-13-131. Influencing recipient to elect particular provider or type of services for purpose of obtaining increase in benefits or payments; penalties.

Any person who shall, through intentional misrepresentation, fraud, deceit or unlawful design, either acting individually or in concert with others, influence any recipient to elect any particular provider of services, or any particular type of services, for the purposes and with the intent to obtain or increase any benefit or payment under this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars ($500.00) or imprisonment not exceeding one (1) year, or by both such fine and imprisonment. This section shall not prohibit prosecution under any other criminal statutes of this state or the United States.

SOURCES: Codes, 1942, § 7290-46; Laws, 1969, Ex Sess, ch. 37, § 16, eff from and after passage (approved October 10, 1969).

Cross References — Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 43-13-133. Intent as to use of federal matching funds.

It is the intent of the Legislature that all federal matching funds for medical assistance under Titles V, XVIII and XIX of the federal Social Security Act paid into any state health agency after October 10, 1969, shall be used exclusively to defray the cost of medical assistance expended under the terms of this article.

SOURCES: Codes, 1942, § 7290-47; Laws, 1969, Ex Sess, ch. 37, § 17, eff from and after passage (approved October 10, 1969).

Federal Aspects — Titles V, XVIII and XIX of the federal Social Security Act, see 42 USCS §§ 701 et seq., 1395 et seq., and 1396 et seq, respectively.

§ 43-13-135. Repealed.

Repealed by Laws, 1994, ch. 649, § 14, eff from and after July 1, 1994.

[Codes, 1942, § 7290-48; Laws, 1969, Ex Sess, ch. 37, § 19; Laws, 1972, ch. 320, § 1; Laws, 1973, ch. 455, § 1; Laws, 1974, ch. 346; Laws, 1975, ch. 339; Laws, 1976, ch. 436; Laws, 1977, ch. 383; Laws, 1979, ch. 495, § 3; Laws, 1980, ch. 306; Laws, 1980, ch. 402; Laws, 1981, ch. 301, § 1; Laws, 1981, ch. 326, § 1; Laws, 1983, 2nd Ex Sess, ch. 9; Laws, 1984, ch. 372; Laws, 1988, ch. 306, § 1; Laws, 1989, ch. 527, § 7; Laws, 1990, ch. 390, § 1; Laws, 1991, ch. 612, § 4; Laws, 1992, ch. 487, § 3]

Editor's Note — Former § 43-13-135 was entitled: Condition upon which this article shall stand repealed.

§ 43-13-137. Division to comply with Administrative Procedure Law.

The division is an agency as defined under Section 25-43-3 and, therefore, must comply in all respects with the Administrative Procedures Law, Section 25-43-1 et seq.

SOURCES: Codes, 1942, § 7290-50; Laws, 1969, Ex Sess, ch. 37, § 21; Laws, 1981, ch. 451, § 2; Laws, 2000, ch. 301, § 12, eff from and after July 1, 1999.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq., referred to in this section, shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Chapter 301 of Laws of 2000, was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Cross References — Administrative Procedures Law, see §§ 25-43-1.101 et seq.

ATTORNEY GENERAL OPINIONS

The Division of Medicaid is required to follow the Administrative Procedures Law when it enacts a rule which has the effect of restricting, suspending, limiting or terminating benefits to a beneficiary. Gordon, Mar. 18, 2005, A.G. Op. 05-0068.

§ 43-13-139. Governor authorized to discontinue or limit medical assistance to optional groups; division to cease state funding upon discontinuance of federal funding.

Nothing contained in this article shall be construed to prevent the Governor, in his discretion, from discontinuing or limiting medical assistance to any individuals who are classified or deemed to be within any optional group or optional category of recipients as prescribed under Title XIX of the federal

Social Security Act or the implementing federal regulations. If the Congress or the United States Department of Health and Human Services ceases to provide federal matching funds for any group or category of recipients or any type of care and services, the division shall cease state funding for such group or category or such type of care and services, notwithstanding any provision of this article.

SOURCES: Laws, 1994, ch. 649, § 6, eff from and after July 1, 1994.

Editor's Note — A former § 43-13-139 [Laws, 1982, ch. 483, § 2; Laws of 1984, ch. 488, § 54], repealed by Laws of 1993, ch. 609, § 8, effective from and after passage (approved April 20, 1993), authorized the Governor to discontinue or limit medical assistance to optional groups of recipients, and directed that the division cease state funding for groups if federal funding ceased for that group.

Federal Aspects — Title XIX of the federal Social Security Act, see 42 USCS §§ 1396 et seq.

§ 43-13-141. Repealed.

Repealed by Laws, 2004 ch. 593, § 8.

[Laws, 1991, ch. 612, § 1; Laws, 1992, ch. 487, § 4, eff from and after passage (approved May 8, 1992).]

Editor's Note — Former § 43-13-141 was entitled: "Assessment upon certain Medicaid reimbursement payments."

§ 43-13-143. Medical Care Fund.

There is created in the State Treasury a special fund to be known as the "Medical Care Fund," which shall be comprised of monies transferred by public or private health care providers, governing bodies of counties, municipalities, public or community hospitals and other political subdivisions of the state, individuals, corporations, associations and any other entities for the purpose of providing health care services. Any transfer made to the fund shall be paid to the State Treasurer for deposit into the fund, and all such transfers shall be considered as unconditional transfers to the fund. The monies in the Medical Care Fund shall be expended only for health care services, and may be expended only upon appropriation of the Legislature. All transfers of monies to the Division of Medicaid by health care providers and by governing bodies of counties, municipalities, public or community hospitals and other political subdivisions of the state shall be deposited into the fund. Unexpended monies remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on monies in the fund shall be deposited to the credit of the fund.

SOURCES: Laws, 1991, ch. 612, § 2; Laws, 1992, ch. 487, § 5, eff from and after passage (approved May 8, 1992).

Cross References — Deposit of assessments levied on nursing and intermediate care facilities in the Medical Care Fund, see § 43-13-145.

§ 43-13-145. Assessment levied upon health care facilities; keeping of records; collection of assessments; effect of delinquency in payment [Subsections (4) and (10) through (16) repealed effective July 1, 2018].

(1)(a) Upon each nursing facility licensed by the State of Mississippi, there is levied an assessment in an amount set by the division, equal to the maximum rate allowed by federal law or regulation, for each licensed and occupied bed of the facility.

(b) A nursing facility is exempt from the assessment levied under this subsection if the facility is operated under the direction and control of:

(i) The United States Veterans Administration or other agency or department of the United States government;

(ii) The State Veterans Affairs Board; or

(iii) The University of Mississippi Medical Center.

(2)(a) Upon each intermediate care facility for individuals with intellectual disabilities licensed by the State of Mississippi, there is levied an assessment in an amount set by the division, equal to the maximum rate allowed by federal law or regulation, for each licensed and occupied bed of the facility.

(b) An intermediate care facility for individuals with intellectual disabilities is exempt from the assessment levied under this subsection if the facility is operated under the direction and control of:

(i) The United States Veterans Administration or other agency or department of the United States government;

(ii) The State Veterans Affairs Board; or

(iii) The University of Mississippi Medical Center.

(3)(a) Upon each psychiatric residential treatment facility licensed by the State of Mississippi, there is levied an assessment in an amount set by the division, equal to the maximum rate allowed by federal law or regulation, for each licensed and occupied bed of the facility.

(b) A psychiatric residential treatment facility is exempt from the assessment levied under this subsection if the facility is operated under the direction and control of:

(i) The United States Veterans Administration or other agency or department of the United States government;

(ii) The University of Mississippi Medical Center; or

(iii) A state agency or a state facility that either provides its own state match through intergovernmental transfer or certification of funds to the division.

(4) Hospital assessment.

(a)(i) Subject to and upon fulfillment of the requirements and conditions of paragraph (f) below, and notwithstanding any other provisions of this section, effective for state fiscal year 2016, fiscal year 2017 and fiscal year 2018, an annual assessment on each hospital licensed in the state is imposed on each non-Medicare hospital inpatient day as defined below at a rate that is determined by dividing the sum prescribed in this subparagraph (i), plus the nonfederal share necessary to maximize the Disproportionate Share Hospital (DSH) and inpatient Medicare Upper Payment Limits (UPL) payments and inpatient hospital access payments, by the total number of non-Medicare hospital inpatient days as defined below for all licensed Mississippi hospitals, except as provided in paragraph (d) below. If the state matching funds percentage for the Mississippi Medicaid program is sixteen percent (16%) or less, the sum used in the formula under this subparagraph (i) shall be Seventy-four Million Dollars ($74,000,000.00). If the state matching funds percentage for the Mississippi Medicaid program is twenty-four percent (24%) or higher, the sum used in the formula under this subparagraph (i) shall be One Hundred Four Million Dollars ($104,000,000.00). If the state matching funds percentage for the Mississippi Medicaid program is between sixteen percent (16%) and twenty-four percent (24%), the sum used in the formula under this subparagraph (i) shall be a pro rata amount determined as follows: the current state matching funds percentage rate minus sixteen percent (16%) divided by eight percent (8%) multiplied by Thirty Million Dollars ($30,000,000.00) and add that amount to Seventy-four Million Dollars ($74,000,000.00). However, no assessment in a quarter under this subparagraph (i) may exceed the assessment in the previous quarter by more than Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000.00) (which would be Fifteen Million Dollars ($15,000,000.00) on an annualized basis). The division shall publish the state matching funds percentage rate applicable to the Mississippi Medicaid program on the tenth day of the first month of each quarter and the assessment determined under the formula prescribed above shall be applicable in the quarter following any adjustment in that state matching funds percentage rate. The division shall notify each hospital licensed in the state as to any projected increases or decreases in the assessment determined under this subparagraph (i). However, if the Centers for Medicare and Medicaid Services (CMS) does not approve the provision in Section 43-13-117(39) requiring the division to reimburse crossover claims for inpatient hospital services and crossover claims covered under Medicare Part B for dually eligible beneficiaries in the same manner that was in effect on January 1, 2008, the sum that otherwise would have been used in the formula under this subparagraph (i) shall be reduced by Seven Million Dollars ($7,000,000.00).

(ii) In addition to the assessment provided under subparagraph (i), effective for state fiscal year 2016, fiscal year 2017 and fiscal year 2018, an additional annual assessment on each hospital licensed in the state is imposed on each non-Medicare hospital inpatient day as defined below at a rate that is determined by dividing twenty-five percent (25%) of any provider reductions in the Medicaid program as authorized in Section 43-13-117(F) for that fiscal year up to the following maximum amount, plus the nonfederal share necessary to maximize the Disproportionate

Share Hospital (DSH) and inpatient Medicare Upper Payment Limits (UPL) payments and inpatient hospital access payments, by the total number of non-Medicare hospital inpatient days as defined below for all licensed Mississippi hospitals: in fiscal year 2010, the maximum amount shall be Twenty-four Million Dollars ($24,000,000.00); in fiscal year 2011, the maximum amount shall be Thirty-two Million Dollars ($32,000,000.00); and in fiscal year 2012 and thereafter, the maximum amount shall be Forty Million Dollars ($40,000,000.00). Any such deficit in the Medicaid program shall be reviewed by the PEER Committee as provided in Section 43-13-117(F).

(iii) In addition to the assessments provided in subparagraphs (i) and (ii), effective for state fiscal year 2016, fiscal year 2017 and fiscal year 2018, an additional annual assessment on each hospital licensed in the state is imposed pursuant to the provisions of Section 43-13-117(F) if the cost containment measures described therein have been implemented and there are insufficient funds in the Health Care Trust Fund to reconcile any remaining deficit in any fiscal year. If the Governor institutes any other additional cost containment measures on any program or programs authorized under the Medicaid program pursuant to Section 43-13-117(F), hospitals shall be responsible for twenty-five percent (25%) of any such additional imposed provider cuts, which shall be in the form of an additional assessment not to exceed the twenty-five percent (25%) of provider expenditure reductions. Such additional assessment shall be imposed on each non-Medicare hospital inpatient day in the same manner as assessments are imposed under subparagraphs (i) and (ii).

(b) Payment and definitions.

(i) The hospital assessment as described in subsection (4) above shall be assessed and collected monthly no later than the fifteenth calendar day of each month; provided, however, that the first three (3) monthly payments shall be assessed but not be collected until collection is satisfied for the third monthly (September) payment and the second three (3) monthly payments shall be assessed but not be collected until collection is satisfied for the sixth monthly (December) payment and provided that the portion of the assessment related to the DSH payments shall be paid in three (3) one-third (⅓) installments due no later than the fifteenth calendar day of the payment month of the DSH payments required by Section 43-13-117(A)(18), which shall be paid during the second, third and fourth quarters of the state fiscal year, and provided that the assessment related to any inpatient UPL payment(s) shall be paid no later than the fifteenth calendar day of the payment month of the UPL payment(s) and provided assessments related to inpatient hospital access payments will be collected beginning the initial month that the division funds MHAP.

(ii) Definitions. For purposes of this subsection (4):

1. "Non-Medicare hospital inpatient day" means total hospital inpatient days including subcomponent days less Medicare inpatient days including subcomponent days from the hospital's 2013 Medicare cost report on file with CMS.

a. Total hospital inpatient days shall be the sum of Worksheet S-3, Part 1, column 8 row 14, column 8 row 16, and column 8 row 17, excluding column 8 rows 5 and 6.

b. Hospital Medicare inpatient days shall be the sum of Worksheet S-3, Part 1, column 6 row 14, column 6 row 16.00, and column 6 row 17, excluding column 6 rows 5 and 6.

c. Inpatient days shall not include residential treatment or long-term care days.

2. "Subcomponent inpatient day" means the number of days of care charged to a beneficiary for inpatient hospital rehabilitation and psychiatric care services in units of full days. A day begins at midnight and ends twenty-four (24) hours later. A part of a day, including the day of admission and day on which a patient returns from leave of absence, counts as a full day. However, the day of discharge, death, or a day on which a patient begins a leave of absence is not counted as a day unless discharge or death occur on the day of admission. If admission and discharge or death occur on the same day, the day is considered a day of admission and counts as one (1) subcomponent inpatient day.

(c) The assessment provided in this subsection is intended to satisfy and not be in addition to the assessment and intergovernmental transfers provided in Section 43-13-117(A)(18). Nothing in this section shall be construed to authorize any state agency, division or department, or county, municipality or other local governmental unit to license for revenue, levy or impose any other tax, fee or assessment upon hospitals in this state not authorized by a specific statute.

(d) Hospitals operated by the United States Department of Veterans Affairs and state-operated facilities that provide only inpatient and outpatient psychiatric services shall not be subject to the hospital assessment provided in this subsection.

(e) Multihospital systems, closure, merger and new hospitals.

(i) If a hospital conducts, operates or maintains more than one (1) hospital licensed by the State Department of Health, the provider shall pay the hospital assessment for each hospital separately.

(ii) Notwithstanding any other provision in this section, if a hospital subject to this assessment operates or conducts business only for a portion of a fiscal year, the assessment for the state fiscal year shall be adjusted by multiplying the assessment by a fraction, the numerator of which is the number of days in the year during which the hospital operates, and the denominator of which is three hundred sixty-five (365). Immediately upon ceasing to operate, the hospital shall pay the assessment for the year as so adjusted (to the extent not previously paid).

(f) Applicability.

The hospital assessment imposed by this subsection shall not take effect and/or shall cease to be imposed if:

(i) The assessment is determined to be an impermissible tax under Title XIX of the Social Security Act; or

(ii) CMS revokes its approval of the division's 2009 Medicaid State Plan Amendment for the methodology for DSH payments to hospitals under Section 43-13-117(A)(18).

This subsection (4) is repealed on July 1, 2018.

(5) Each health care facility that is subject to the provisions of this section shall keep and preserve such suitable books and records as may be necessary to determine the amount of assessment for which it is liable under this section. The books and records shall be kept and preserved for a period of not less than five (5) years, during which time those books and records shall be open for examination during business hours by the division, the Department of Revenue, the Office of the Attorney General and the State Department of Health.

(6) Except as provided in subsection (4) of this section, the assessment levied under this section shall be collected by the division each month beginning on March 31, 2005.

(7) All assessments collected under this section shall be deposited in the Medical Care Fund created by Section 43-13-143.

(8) The assessment levied under this section shall be in addition to any other assessments, taxes or fees levied by law, and the assessment shall constitute a debt due the State of Mississippi from the time the assessment is due until it is paid.

(9)(a) If a health care facility that is liable for payment of an assessment levied by the division does not pay the assessment when it is due, the division shall give written notice to the health care facility by certified or registered mail demanding payment of the assessment within ten (10) days from the date of delivery of the notice. If the health care facility fails or refuses to pay the assessment after receiving the notice and demand from the division, the division shall withhold from any Medicaid reimbursement payments that are due to the health care facility the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full. If the health care facility does not participate in the Medicaid program, the division shall turn over to the Office of the Attorney General the collection of the unpaid assessment by civil action. In any such civil action, the Office of the Attorney General shall collect the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full.

(b) As an additional or alternative method for collecting unpaid assessments levied by the division, if a health care facility fails or refuses to pay the assessment after receiving notice and demand from the division, the division may file a notice of a tax lien with the chancery clerk of the county in which the health care facility is located, for the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full. Immediately upon receipt of notice of the tax lien for the assessment, the chancery clerk shall forward the notice to the circuit clerk who shall enter the notice of the tax lien as a judgment upon the judgment roll and show in the appropriate columns the name of the health care facility as judgment debtor, the name of the division as judgment creditor, the amount of the unpaid assessment, and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors and other persons from the time of filing with the clerk. The amount of the judgment shall be a debt due the State of Mississippi and remain a lien upon the tangible property of the health care facility until the judgment is satisfied. The judgment shall be the equivalent of any enrolled judgment of a court of record and shall serve as authority for the issuance of writs of execution, writs of attachment or other remedial writs.

(10) As soon as possible after July 1, 2009, the Division of Medicaid shall submit to the Centers for Medicare and Medicaid Services (CMS) a state plan amendment or amendments (SPA) regarding the hospital assessment established under subsection (4) of this section. In addition to defining the assessment established in subsection (4) of this section, the state plan amendment or amendments shall include any amendments necessary to provide for the following additional annual Medicare Upper Payment Limits (UPL) and Disproportionate Share Hospital (DSH) payments to hospitals located in Mississippi that participate in the Medicaid program:

(a) Privately operated and nonstate government operated hospitals, within the meaning of 42 CFR Section 447.272, that have fifty (50) or fewer licensed beds as of January 1, 2009, shall receive an additional inpatient UPL payment equal to sixty-five percent (65%) of their fiscal year 2013 hospital specific inpatient UPL gap, before any payments under this subsection.

(b) General acute care hospitals licensed within the class of state hospitals shall receive an additional inpatient UPL payment equal to twenty-eight percent (28%) of their fiscal year 2013 inpatient payments, excluding DSH and UPL payments.

(c) General acute care hospitals licensed within the class of nonstate government hospitals shall receive an additional inpatient UPL payment determined by multiplying inpatient payments, excluding DSH and UPL, by the uniform percentage necessary to exhaust the maximum amount of inpatient UPL payments permissible under federal regulations. (For state fiscal year 2015 and fiscal year 2016, the state shall use 2013 inpatient payment data).

(d) In addition to other payments provided above, all hospitals licensed within the class of private hospitals shall receive an additional inpatient UPL payment determined by multiplying inpatient payments, excluding DSH and UPL, by the uniform percentage necessary to exhaust the maximum amount of UPL inpatient payments permissible under federal regulations. For state fiscal year 2015 and fiscal year 2016, the state shall use 2013 data.

(e) All hospitals satisfying the minimum federal DSH eligibility requirements (Section 1923(d) of the Social Security Act) shall, subject to

OBRA 1993 payment limitations, receive an additional DSH payment. This additional DSH payment shall expend the balance of the federal DSH allotment and associated state share not utilized in DSH payments to state-owned institutions for treatment of mental diseases. The payment to each hospital shall be calculated by applying a uniform percentage to the uninsured costs of each eligible hospital, excluding state-owned institutions for treatment of mental diseases; however, that percentage for a state-owned teaching hospital located in Hinds County shall be multiplied by a factor of two (2).

(11) The portion of the hospital assessment provided in subsection (4) of this section associated with the MHAP shall not be in effect or implemented until the approval by CMS for the MHAP is obtained.

(12) The division shall implement DSH and UPL calculation methodologies that result in the maximization of available federal funds.

(13) The DSH and inpatient UPL payments shall be paid on or before December 31, March 31, and June 30 of each fiscal year, in increments of one-third (⅓) of the total calculated DSH and inpatient UPL amounts.

(14) The hospital assessment as described in subsection (4) above shall be assessed and collected monthly no later than the fifteenth calendar day of each month; provided, however, that the first three (3) monthly payments shall be assessed but not be collected until collection is satisfied for the third monthly (September) payment and the second three (3) monthly payments shall be assessed but not be collected until collection is satisfied for the sixth monthly (December) payment and provided that the portion of the assessment related to the DSH payments shall be paid in three (3) one-third (⅓) installments due no later than the fifteenth calendar day of the payment month of the DSH payments required by Section 43-13-117(A)(18), which shall be paid during the second, third and fourth quarters of the state fiscal year, and provided that the assessment related to any inpatient UPL payment(s) shall be paid no later than the fifteenth calendar day of the payment month of the UPL payment(s) and provided assessments related to MHAP will be collected beginning the initial month that the division funds MHAP.

(15) If for any reason any part of the plan for additional annual DSH and inpatient UPL payments to hospitals provided under subsection (10) of this section is not approved by CMS, the remainder of the plan shall remain in full force and effect.

(16) Nothing in this section shall prevent the Division of Medicaid from facilitating participation in Medicaid supplemental hospital payment programs by a hospital located in a county contiguous to the State of Mississippi that is also authorized by federal law to submit intergovernmental transfers (IGTs) to the State of Mississippi to fund the state share of the hospital's supplemental and/or MHAP payments.

(17) Subsections (10) through (16) of this section shall stand repealed on July 1, 2018.

SOURCES: Laws, 1992, ch. 487, § 7; Laws, 2002, ch. 636B, § 5; Laws, 2003, ch. 543, § 6; Laws, 2004, ch. 593, § 6; Laws, 2005, ch. 470, § 3; brought forward without change, Laws, 2008, ch. 360, § 3; Laws, 2009, 2nd Ex Sess, ch. 118, § 3; Laws, 2012, ch. 530, § 4; Laws, 2013, 2nd Ex Sess, ch. 1, § 4; Laws, 2014, ch. 488, § 5; Laws, 2015, ch. 483, § 2, eff from and after passage (approved Apr. 22, 2015.)

Editor's Note — Chapter 118 of the Second Extraordinary Session of 2009 was effective on July 1, 2009, but the amendments to this section were contingent upon the effectuation of the hospital assessment provided for in subsection (4) of this section. Subsection (4)(f) of this section [in the first version of the section as it appeared in Laws of 2009, 2nd Ex Session, Ch. 118, § 3] provides that the hospital assessment will not take effect if the Centers for Medicare and Medicaid Services (CMS) does not approve the Division of Medicaid's 2009 Medicaid State Plan Amendment for its methodology for Disproportionate Share Hospital (DSH) and inpatient Medicare Upper Payment Limits (UPL) payments to hospitals. CMS approved the State Plan Amendment on March 9, 2010, and the hospital assessment then became effective, so the amendments to this section by Chapter 118 of the Second Extraordinary Session of 2009 became effective on March 9, 2010.

Chapter 636B of Laws of 2002, was Senate Bill 2189, 2002 Regular Session, and originally passed the House of Representatives and the Senate on April 2, 2002. The Governor vetoed Senate Bill 2189 on April 9, 2002. The veto was overridden by both the House of Representatives and the Senate on April 12, 2002.

The reference to "Section 43-13-117(39)" in the last sentence of (4)(a)(i) should be to "Section 43-13-117(A)(39)."

Laws of 2012, ch. 530, § 5, provides:

"SECTION 5. (1) The Division of Medicaid shall develop proposals for the following:

"(a) The division shall develop a plan for the APR-DRG reimbursement methodology which increases such payments in order to reduce or eliminate Medicare Upper Payment Limits (UPL) program payments;

"(b) The division shall develop a plan to replace the existing hospital assessment provided in Section 43-13-145 with other possible revenue systems, including the possibility of a net inpatient revenue assessment;

"(c) The division shall develop a plan providing revisions to the current reimbursement methodology for prescription drugs.

"(d) The division shall develop a plan providing revisions to the current reimbursement methodology for nursing facility services.

"(2) The division shall not implement these plans, but shall submit the plans to the Public Health and Welfare Committee of the Senate and the Medicaid Committee of the House no later than October 15, 2012, including necessary legislative recommendations."

Amendment Notes — The 2014 amendment, in (2)(a) and (2)(b), substituted "individuals with intellectual disabilities" for "the mentally retarded"; in (4)(a)(i) and (4)(a)(ii), inserted "fiscal year 2015 and fiscal year 2016" following "fiscal year 2014" and substituted a comma for "and" near the beginning of the first sentence; in (4)(a)(iii), substituted "2015" for "2013" and "2016" for "2014" near the beginning of the first sentence; in (4)(b)(ii)1., substituted "2013" for "2010" near the end; in the last undesignated paragraph of (4)(f)(ii) and in (17), extended the repealer provision from "July 1, 2014" to "July 1, 2016"; deleted (10)(d) and (10)(e) and redesignated the remaining subsections accordingly; in (10)(a), deleted "general acute care" following "and nonstate government operated" and substituted "2013" for "2012" near the end; in (10)(b), substituted "2013" for "2007"; in (10)(c) and present (10)(d), substituted "2015" for "2013", "2016" for "2014", and "2013" for "2010"; and in present (10)(d), deleted "other than freestanding psychiatric hospitals" following "licensed within the class of private hospitals."

The 2015 amendment, in the first sentence of (4)(a)(i), substituted "2016, fiscal year 2017 and fiscal year 2018" for "2013, fiscal year 2014, fiscal year 2015," and inserted "and inpatient hospital access payments" near the end; substituted "2016, fiscal year 2017 and fiscal year 2018" for "2013, fiscal year 2014, fiscal year 2015 and fiscal year 2016" in (4)(a)(ii); in (4)(a)(iii), substituted "2016, fiscal year 2017 and fiscal year 2018" for "2015 and fiscal year 2016"; rewrote (4)(b)(i), which read: "Payment. Upon approval of the State Plan Amendment for the division's DSH and inpatient UPL payment methodology by CMS, the assessment shall be paid in three (3) installments due no later than ten (10) days before the payment of the DSH and UPL payments required by Section 43-13-117(A)(18), which shall be paid during the second, third and fourth quarters of the state fiscal year"; in (4)(b)(ii)1.a., substituted all references to "column 8" for all references to "column 6," and substituted references to row numbers as follows: "14" for "12," "16" for "14.00," "17" for "14.01," and "5 and 6" for "3 and 4"; in (4)(b)(ii)1.b., substituted all references to "column 6" for all references to "column 4," and substituted references to row numbers as follows: "14" for "12," "16.00" for "14.00," "17" for "14.01," and "5 and 6" for "3 and 4"; deleted "and inpatient UPL" preceding "payments to hospitals under Section 43-13-117(A)(18)" in (4)(f)(ii); substituted "July 1, 2018" for "July 1, 2016" in the last paragraph of (4)(b)(ii); rewrote (11), which read: "The hospital assessment provided in subsection (4) of this section shall not be in effect or implemented until the SPA is approved by CMS"; rewrote (14), which read: "The hospital assessment as described in subsection (4) above shall be assessed and collected quarterly a maximum of ten (10) days before making the DSH and inpatient UPL payments; provided, however, that the first quarterly payment shall be assessed but not be collected until collection is made for the second quarterly payment"; inserted "and/r MHAP" near the end of (16); and substituted "July 1, 2018" for "July 1, 2016" in (17).

Cross References — Title XIX of the Social Security Act, see 42 USCS §§ 1396 et seq. The Deficit Reduction Act of 2005, 109 P.L. 171, 120 Stat. 4, 2006 Enacted S. 1932, 109 Enacted S. 1932.

Federal Aspects — Titles XVIII and XIX of the Social Security Act appear as 42 USCS §§ 1395 through 1395ccc and 42 USCS §§ 1396 through 1396v, respectively.

Additional reimbursement to hospitals serving disproportionate share of low income patients under Federal Social Security Act, see 42 USCS § 1395ww (d)(5)(C)(i).

Section 1886(d)(5)(F) of the Federal Social Security Act, see 42 USCS § 1395ww.

Section 1902 (a)(30) of the Social Security Act appears as 42 USCS § 1396a.

Section 1903 of the Social Security Act, see 42 USCS § 1396b.

Section 1923 of the Social Security Act, see 42 USCS § 1396r-4.

Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

§ 43-13-147. Mississippi Medicaid Program and Children's Health Insurance Program to examine and improve hospital discharge and follow-up care procedures for certain premature infants and implement programs to improve newborn outcomes; reporting of data regarding rehospitalization of certain premature infants.

(1) The Mississippi Medicaid Program and the Children's Health Insurance Program, in consultation with statewide organizations focused on premature infant healthcare, shall:

(a) Examine and improve hospital discharge and follow-up care procedures for premature infants born earlier than thirty-seven (37) weeks gestational age to ensure standardized and coordinated processes are followed as premature infants leave the hospital from either a Level 1 (well baby nursery), Level 2 (step down or transitional nursery) or Level 3 (neonatal intensive care unit) unit and transition to follow-up care by a health care provider in the community; and

(b) Use guidance from the Centers for Medicare and Medicaid Services' Neonatal Outcomes Improvement Project to implement programs to improve newborn outcomes, reduce newborn health costs and establish ongoing quality improvement for newborns.

(2) Data regarding the incidence and cause of rehospitalization in the first six (6) months of life for infants born premature at earlier than thirty-seven (37) weeks gestational age shall be reported to the Chairman of the House Public Health and Human Services Committee and the Chairman of the Senate Public Health and Welfare Committee by the Mississippi State Department of Health utilizing the mandated hospital discharge data system authorized in Section 41-63-4.

SOURCES: Laws, 2009, ch. 553, § 3, eff from and after July 1, 2009.

Editor's Note — Laws of 2009, ch. 553, §§ 1 and 2 provide:

"SECTION 1. It is the purpose of this act to:

"(a) Improve health care quality and outcomes for infants born preterm through enhanced hospital discharge, follow-up care and management processes and reduced rehospitalization; and

"(b) Reduce infant morbidity and mortality associated with prematurity."

"SECTION 2. The Legislature makes the following findings:

"(a) According to the Institute for Medicine, although there has been significant attention focused on neonatal intensive care for extremely preterm infants, little attention has been given to the majority of late-preterm infants born at thirty-four (34) through thirty-six (36) weeks gestational age. Even though these late-preterm infants may appear larger in size, are still more vulnerable to complications and disabilities than full-term infants. All babies born premature, including late-preterm infants, are at risk for a host of health and developmental issues that can last into and sometimes beyond childhood.

"(b) Premature births are rising in Mississippi: eighteen and eight-tenths percent (18.8%) of Mississippi births were preterm in 2005, and premature births increased twenty-two percent (22%) in Mississippi between 1995 and 2005.

"(c) In Mississippi, premature birth rates were highest in African Americans twenty-two and four-tenths percent (22.4%) followed by Whites fifteen percent (15%) and Hispanics thirteen and six-tenths percent (13.6%) in 2002-2004.

"(d) Mississippi Medicaid paid for fifty-five and eight-tenths percent (55.8%) of all births in 2002.

"(e) The direct employer health care cost for premature infants in their first year are fifteen (15) times greater than healthy full-term infants: Forty-one Thousand Six Hundred Ten Dollars ($41,610.00) versus Two Thousand Eight Hundred Thirty Dollars ($2,830.00).

"(f) There are no standardized procedures for hospital discharge and follow-up care of premature infants. As a result, babies born premature may leave the hospital after birth without adequate discharge and follow-up care plans in place to ensure they receive appropriate care to address their special health needs once they are home in their community.

"(g) Although there is growing evidence that late-preterm infants are at increased risk for morbidity and mortality compared to full-term infants, late-preterm infants may not be identified or managed any differently than full-term infants.

"(h) Without organized discharge care plans, premature babies are more likely to experience gaps in health care. These infants require diligent evaluation, monitoring, referral and early return appointments for both post-neonatal evaluation and also continued long-term follow-up care.

"(i) It is important to focus on the care and management of premature infants because the number of babies born premature at less than thirty-seven (37) weeks gestational age continues to grow in the United States with an increase of twenty percent (20%) since 1990 and nine percent (9%) since only 2000.

"(j) In 2005, twelve and seven-tenths (12.7%) of all births were premature at less than thirty-seven (37) weeks gestational age, or more than five hundred twenty-five thousand (525,000) infants.

"(k) The increase in premature birth rates in recent years is primarily associated with a rise in late-preterm births (thirty-four (34) through thirty-six (36) weeks gestational age), which has increased twenty-five percent (25%) since 1990 and account for seventy percent (70%) of all preterm births. Although multiple births have contributed to this rise, substantial increases in preterm birth rates, and especially late-preterm rates, have occurred because of singleton birth rates since 1990.

"(*l*) Several studies have found that late-preterm infants have greater morbidity and mortality than full-term infants.

"(m) Late-preterm infants have a mortality rate that is three (3) times greater than full-term infants, with the highest risk occurring during the neonatal period.

"(n) Late-preterm babies have significant differences in clinical outcomes than full-term infants during the birth hospitalization, including greater risk for temperature instability, hypoglycemia, respiratory distress, and jaundice.

"(o) Late-preterm infants have higher rates of rehospitalization during their first full year of life compared to full-term infants.

"(p) The costs of premature births are significant: For the initial hospitalization after birth, the average length of stay for full-term infants was two and two-tenths (2.2) days and the average cost was Two Thousand Eighty-seven Dollars ($2,087.00), whereas late-preterm infants had a substantially longer average stay of eight and eight-tenths (8.8) days and cost of Twenty-six Thousand Fifty-four Dollars ($26,054.00). The average cost for late-preterm infants in their first year of life was Thirty-eight Thousand Three Hundred One Dollars ($38,301.00) versus Six Thousand One Hundred Fifty-six Dollars ($6,156.00) for full-term infants. Late-preterm infants had higher costs across every type of medical service category compared to full-term infants, including inpatient hospitalizations, well baby physician office visits, outpatient hospital services, home health care services and prescription drug use.

"(q) The most frequent causes of rehospitalization for late-preterm infants are RSV bronchiolitis, bronchiolitis (cause unspecified), pneumonia (cause unspecified), esophageal reflux and vascular implant complications.

"(r) Because all premature infants, and especially late-preterm infants born at thirty-four (34) through thirty-six (36) weeks gestational age, have higher risks for medical complications and rehospitalizations compared to full-term infants, stakeholders should examine and improve the discharge process, follow-up care and management of these infants to foster better health outcomes and lower risks for rehospitalizations and complications."

§ 43-13-149. Medicaid planners; definitions; annual registration with Division of Medicaid required; bond [Repealed effective July 1, 2017].

(1) As used in this section, the following terms shall be defined as provided in this subsection:

(a) "Medicaid planner" means an individual who provides Medicaid planning services to other individuals for compensation. However, this term does not include (i) individuals who are licensed attorneys engaged in the practice of law, or (ii) other individuals who are licensed to provide services that may include Medicaid planning services.

(b) "Medicaid planning" means any assistance provided to a potential Medicaid applicant in advance of and in preparation for their Medicaid application, in order to help the applicant apply for and obtain benefits from the Mississippi Medicaid program.

(2) Each Medicaid planner shall register annually with the Division of Medicaid and provide the following information about the planner to the division:

(a) The planner's place of business, physical address, mailing address, email address and other contact information;

(b) The planner's education level and the number of years that the planner has engaged in Medicaid planning;

(c) Whether the planner holds certification as a Certified Medicaid Planner; and

(d) Such other information as required by the Division of Medicaid.

(3) The Division of Medicaid shall provide the list of registered Medicaid planners and the information contained in the registrations to each local and regional Medicaid office in the state.

(4) The Division of Medicaid shall include a question on the application for Medicaid benefits asking if the applicant has used or is using the services of a Medicaid planner for compensation in the process of applying for Medicaid benefits, and the name and contact information of the Medicaid planner if one was used or is being used by the applicant.

(5) At the time of initial registration, each Medicaid planner shall file with the State Treasurer and have approved by the Secretary of State a surety bond in which the planner is the principal obligor, in the sum of One Hundred Thousand Dollars ($100,000.00) with one or more surety companies licensed to do business in this state whose liability in the aggregate will be equal to that sum. The bond shall be in favor of the State of Mississippi for the benefit of any individual for which the Medicaid planner has provided Medicaid planning services for compensation who suffers or incurs any loss, liability or damages by reason of acts of fraud, dishonesty, malfeasance or misfeasance of the planner or failure of the planner to provide the services as represented. Any individual claiming against the bond may maintain an action against the Medicaid planner and the surety.

(6) Any Medicaid planner who willfully fails to register with the Division of Medicaid or file a surety bond with the State Treasurer as required by this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars ($500.00) for the first violation and not more than Two Thousand Five Hundred Dollars ($2,500.00) for the second and any later violations.

(7) This section shall stand repealed on July 1, 2017.

SOURCES: Laws, 2015, ch. 473, § 4, eff from and after July 1, 2015.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 5.

MEDICAID FRAUD CONTROL ACT.

SEC.

43-13-201. Short title.
43-13-203. Definitions.
43-13-205. False representations or statements in application for Medicaid benefits; concealment or nondisclosure of facts.
43-13-207. Kickbacks and bribes.
43-13-209. False statements or false representations as to conditions or operation of institution or facility.
43-13-211. Conspiracy.
43-13-213. False or fraudulent claim.
43-13-215. Penalties.
43-13-217. Evidentiary matters concerning false statements or representations.
43-13-219. Medicaid fraud control unit.
43-13-221. Attorney General; investigation and prosecution; investigator status as law enforcement officer.
43-13-223. Jurisdiction; service of process.
43-13-225. Civil liability and penalty of health care provider.
43-13-227. Injunction; appointment of receiver for residential health care facility.
43-13-229. Inspection and audit of health care provider records; cessation of reimbursement for failure to disclose.
43-13-231. Power of local authorities.
43-13-233. Existing law not affected.

§ 43-13-201. Short title.

This article shall be known and may be cited as the "Medicaid Fraud Control Act."

SOURCES: Laws, 1984, ch. 503, § 1, eff from and after passage (approved May 15, 1984).

Cross References — Insurance Integrity Enforcement Bureau jurisdiction, see § 7-5-307.

Federal Aspects — Medicaid generally, see 42 USCS §§ 1396 et seq.

RESEARCH REFERENCES

ALR. Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical services. 50 A.L.R.3d 549.

Practice References. Health Care Administration Library (CD-ROM) (LexisNexis).

§ 43-13-203. Definitions.

As used in this article:

(a) "Benefit" means the receipt of money, goods, services or anything of pecuniary value.

(b) "False statement" or "false representation" means a statement or representation knowingly and wilfully made by a person knowing of the falsity of the statement or representation.

(c) "Knowing" and "knowingly" means that a person is aware of the nature of his conduct and that such conduct is substantially certain to cause the intended result.

(d) "Medicaid benefit" means a benefit paid or payable under the Medicaid program established under Section 43-13-101 et seq.

(e) "Person" means an individual, corporation, unincorporated association, partnership or other form of business association.

SOURCES: Laws, 1984, ch. 503, § 2, eff from and after passage (approved May 15, 1984).

RESEARCH REFERENCES

ALR. Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical services. 50 A.L.R.3d 549.

§ 43-13-205. False representations or statements in application for Medicaid benefits; concealment or nondisclosure of facts.

(1) A person shall not knowingly make or cause to be made a false representation of a material fact in an application for Medicaid benefits.

(2) A person shall not knowingly make or cause to be made a false statement of a material fact for use in determining rights to a Medicaid benefit.

(3) A person, who having knowledge of the occurrence of an event affecting his initial or continued right to receive a Medicaid benefit, shall not conceal or fail to disclose that event with intent to obtain a medicaid benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.

SOURCES: Laws, 1984, ch. 503, § 3, eff from and after passage (approved May 15, 1984).

Cross References — Disbursement of Medicaid funds, see § 43-13-113.

Persons entitled to received medical assistance, see § 43-13-115.

Authority to determine medical assistance eligibility, see § 43-13-116.

False statements or representations concerning conditions or operation of an institution or facility, see § 43-13-209.

Evidence in prosecutions concerning false statements or representations, see § 43-13-217.

Civil liability of health care provider for violations of Medicaid Fraud Control Act, see § 43-13-225.
Fraud in connection with state or federally funded assistance program, see § 97-19-71.

RESEARCH REFERENCES

ALR. Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare program for providing medical services. 50 A.L.R.3d 549.

§ 43-13-207. Kickbacks and bribes.

A person shall not solicit, offer or receive a kickback or bribe in the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to the Medicaid program, or make or receive any such payment, or receive a rebate of a fee or charge for referring an individual to another person for the furnishing of such goods or services.

SOURCES: Laws, 1984, ch. 503, § 4, eff from and after passage (approved May 15, 1984).

Cross References — Disbursement of Medicaid funds, see § 43-13-113.
Persons entitled to received medical assistance, see § 43-13-115.
Authority to determine medical assistance eligibility, see § 43-13-116.
Civil liability of health care provider for violations of Medicaid Fraud Control Act, see § 43-13-225.
Fraud in connection with state or federally funded assistance program, see § 97-19-71.

RESEARCH REFERENCES

ALR. Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare program for providing medical services. 50 A.L.R.3d 549.

§ 43-13-209. False statements or false representations as to conditions or operation of institution or facility.

A person shall not knowingly and wilfully make, induce or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, to receive Medicaid benefits as a hospital, skilled nursing facility, intermediate care facility or home health agency.

SOURCES: Laws, 1984, ch. 503, § 5, eff from and after passage (approved May 15, 1984).

Cross References — Disbursement of Medicaid funds, see § 43-13-113.
Persons entitled to received medical assistance, see § 43-13-115.
Authority to determine medical assistance eligibility, see § 43-13-116.

False statements or representations in an application for medicaid benefits, see § 43-13-205.

Evidence in prosecutions concerning false statements or representations, see § 43-13-217.

Civil liability of health care provider for violations of Medicaid Fraud Control Act, see § 43-13-225.

Fraud in connection with state or federally funded assistance program, see § 97-19-71.

RESEARCH REFERENCES

ALR. Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare program for providing medical services. 50 A.L.R.3d 549.

§ 43-13-211. Conspiracy.

A person shall not enter into an agreement, combination or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious or fraudulent claim for Medicaid benefits.

SOURCES: Laws, 1984, ch. 503, § 6, eff from and after passage (approved May 15, 1984).

Cross References — Disbursement of Medicaid funds, see § 43-13-113.

Persons entitled to received medical assistance, see § 43-13-115.

Authority to determine medical assistance eligibility, see § 43-13-116.

False or fraudulent claim, see § 43-13-213.

Civil liability of health care provider for violations of Medicaid Fraud Control Act, see § 43-13-225.

Crime of conspiracy, see § 97-1-1.

Fraud in connection with state or federally funded assistance program, see § 97-19-71.

RESEARCH REFERENCES

ALR. Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare program for providing medical services. 50 A.L.R.3d 549.

§ 43-13-213. False or fraudulent claim.

A person shall not make, present or cause to be made or presented a claim for Medicaid benefits, knowing the claim to be false, fictitious or fraudulent.

SOURCES: Laws, 1984, ch. 503, § 7, eff from and after passage (approved May 15, 1984).

Cross References — Disbursement of Medicaid funds, see § 43-13-113.

Persons entitled to received medical assistance, see § 43-13-115.

Authority to determine medical assistance eligibility, see § 43-13-116.

Evidence in prosecutions concerning false statements or representations, see § 43-13-217.

Civil liability of health care provider for violations of Medicaid Fraud Control Act, see § 43-13-225.

Fraud in connection with state or federally funded assistance program, see § 97-19-71.

JUDICIAL DECISIONS

1. Sufficient evidence.

There was sufficient evidence presented to convict defendant of Medicaid fraud, even though a patient admitted that he had lied in the past about seeing medical providers, because the documentation provided by defendant falsely indicated that defendant had actually spoken to the providers; moreover, allowing the verdict to stand would not have sanctioned an unconscionable injustice. Woods v. State, 965 So. 2d 725 (Miss. Ct. App. 2007).

RESEARCH REFERENCES

ALR. Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical services. 50 A.L.R.3d 549.

§ 43-13-215. Penalties.

A person who violates any provision of Sections 43-13-205 through 43-13-213 shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment for not more than five (5) years, or by a fine of not more than Fifty Thousand Dollars ($50,000.00), or both. Sentences imposed for convictions of separate offenses under this article may run consecutively.

SOURCES: Laws, 1984, ch. 503, § 8, eff from and after passage (approved May 15, 1984).

Cross References — Civil liability of health care provider for violations of Medicaid Fraud Control Act, see § 43-13-225.

Fraud in connection with state or federally funded assistance program, see § 97-19-71.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Treble civil penalty of $84,460.60 for Medicaid fraud, and imposition of prison sentence after defendant failed to pay penalty, did not constitute double jeopardy when considered with other punishment received when defendant pleaded guilty, such as a fine for actual amount of fraud and two-year probation; all punishment was imposed in a single proceeding, and punishment was within statutory authority. Jennings v. State, 700 So. 2d 1326 (Miss. 1997).

RESEARCH REFERENCES

ALR. Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical services. 50 A.L.R.3d 549.

§ 43-13-217. Evidentiary matters concerning false statements or representations.

In any prosecution under this article, it shall not be necessary to show that the person had knowledge of similar acts having been performed in the past on the part of persons acting on his behalf, nor to show that the person had actual notice that the acts by persons acting on his behalf occurred, in order to establish the fact that a false statement or representation was knowingly made.

SOURCES: Laws, 1984, ch. 503, § 9, eff from and after passage (approved May 15, 1984).

Cross References — Fraud in connection with state or federally funded assistance program, see § 97-19-71.

§ 43-13-219. Medicaid fraud control unit.

There is hereby created within the office of the attorney general a "Medicaid Fraud Control Unit." The unit shall consist of a director appointed by the attorney general and such attorneys, auditors, investigator and other such personnel as are necessary to conduct the activities of the unit.

SOURCES: Laws, 1984, ch. 503, § 10, eff from and after passage (approved May 15, 1984).

Cross References — Appointment of special counsel and investigators by the attorney general, see § 7-5-7.

Requirement that any abuse or exploitation of a patient or resident of a care facility be reported to the medicaid fraud unit, see § 43-47-37.

RESEARCH REFERENCES

Law Reviews. Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 43-13-221. Attorney General; investigation and prosecution; investigator status as law enforcement officer.

The Attorney General, acting through the Director of the Fraud Control Unit, may, in any case involving alleged violations of this article, conduct an investigation or prosecution. In conducting such actions, the Attorney General, acting through the director, shall have all the powers of a district attorney, including the powers to issue or cause to be issued subpoenas or other process.

Persons employed by the Attorney General as investigators in the Medicaid Fraud Control Unit shall serve as law enforcement officers as defined in Section 45-6-3, and they shall be empowered to make arrests and to serve and execute search warrants and other valid legal process anywhere within the State of Mississippi.

SOURCES: Laws, 1984, ch. 503, § 11; Laws, 1998, ch. 374, § 1, eff from and after July 1, 1998.

Cross References — Authority of the Attorney General to prosecute suits, see § 7-5-37.

§ 43-13-223. Jurisdiction; service of process.

(1) An action brought in connection with any matter under this article may be filed in the circuit court of the First Judicial District of Hinds County or in the circuit court of the county in which the defendant resides, and may be prosecuted to final judgment in satisfaction there.

(2) Process issued by a court in which an action is filed may be served anywhere in the state.

SOURCES: Laws, 1984, ch. 503, § 12, eff from and after passage (approved May 15, 1984).

Cross References — Jurisdiction of circuit courts, generally, see § 9-7-81.

§ 43-13-225. Civil liability and penalty of health care provider.

(1) A health care provider or vendor committing any act or omission in violation of this article shall be directly liable to the state and shall forfeit and pay to the state a civil penalty equal to the full amount received, plus an additional civil penalty equal to triple the full amount received.

(2) A criminal action need not be brought against a person for that person to be civilly liable under this article.

SOURCES: Laws, 1984, ch. 503, § 13, eff from and after passage (approved May 15, 1984).

Cross References — Criminal sanctions for violations of Medicaid Fraud Control Act, see § 43-13-215.

JUDICIAL DECISIONS

1. In general.

Treble civil penalty of $84,460.60 for Medicaid fraud, and imposition of prison sentence after defendant failed to pay penalty, did not constitute double jeopardy when considered with other punishment received when defendant pleaded guilty, such as a fine for actual amount of fraud and two-year probation; all punishment was imposed in a single proceeding, and punishment was within statutory authority. Jennings v. State, 700 So. 2d 1326 (Miss. 1997).

Daycare service owner who forged credentials in order to receive Medicaid provider number as a speech pathologist, then submitted false Medicaid claims for more than $28,000, was deemed a "health care provider" and thus subject to civil penalty equal to amount received plus an additional treble penalty, the same as if she had been properly licensed or credentialed by state. Jennings v. State, 700 So. 2d 1326 (Miss. 1997).

RESEARCH REFERENCES

ALR. Imposition of civil penalties, under state statute, upon medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare programs for providing medical services. 32 A.L.R.4th 671.

§ 43-13-227. Injunction; appointment of receiver for residential health care facility.

(1) As a means of protecting the health, safety and welfare of patients in residential health care facilities, including hospitals and nursing homes, whenever there is probable cause that any acts or omissions in violation of this article have been committed by a person who is in control of assets purchased, in whole or in part, directly or indirectly, with funds from the Medicaid program and is likely to convert, destroy or remove those assets, the attorney general, acting through the director of the fraud control unit, shall be authorized to petition the chancery court of the county in which those assets may be found to enjoin the person in control of the assets from converting, destroying or removing those assets, and to appoint a receiver to manage those assets until the investigation and any litigation are completed.

(2) The chancery court shall, immediately upon receipt of the petition of the attorney general, acting through the director of the fraud control unit, enjoin the person in control of the assets from converting, destroying or removing those assets.

(3) The chancery court shall issue an order to show cause why a receiver should not be appointed, returnable within ten (10) days after filing of the petition.

(4) If the chancery court finds that the facts warrant the granting of the petition to appoint a receiver, the court shall appoint a receiver to take charge of the residential health care facility and any other assets involved. The court may determine fair compensation for the receiver.

SOURCES: Laws, 1984, ch. 503, § 14, eff from and after passage (approved May 15, 1984).

Cross References — Jurisdiction of chancery court, generally, and power to punish for violation of injunction, see §§ 9-5-81 and 9-5-87.

Appointment of receivers by chancery court, see §§ 11-5-151 et seq.

§ 43-13-229. Inspection and audit of health care provider records; cessation of reimbursement for failure to disclose.

(1) During any investigation under this article, the attorney general, acting through the director of the fraud control unit, shall have the right to audit and to inspect the records of any health care provider or vendor of Medicaid benefits.

(2) Reimbursement under the Medicaid program shall not be available for services furnished by a provider or vendor who is otherwise eligible for Medicaid benefits during any period when such provider or vendor has refused to provide the attorney general and the director of the fraud control unit such information as the unit may request in order to complete its investigation.

(3) Suspension of Medicaid reimbursement payments shall continue during all periods during which any part of any requested records are not produced, notwithstanding any administrative, legal or other proceedings which may be brought or maintained by such provider or vendor or by any other party to forestall, modify or prevent the request for records.

(4) As used in this section, "requested records" means those records required by the unit for investigative or prosecutorial purposes, and requested by subpoena, subpoena duces tecum, grand jury subpoena, administrative demand, search warrant, or other process, demand or written request.

SOURCES: Laws, 1984, ch. 503, § 15, eff from and after passage (approved May 15, 1984).

Cross References — Duty to maintain records, see § 43-13-118.

§ 43-13-231. Power of local authorities.

The powers of the attorney general, acting through the director of the fraud control unit, under this article shall not diminish the powers of local authorities to investigate and/or prosecute criminal conduct within their respective jurisdictions.

SOURCES: Laws, 1984, ch. 503, § 16, eff from and after passage (approved May 15, 1984).

§ 43-13-233. Existing law not affected.

Nothing in this article shall in any way limit any penalties or remedies which may be available under any other statute or law of this state.

SOURCES: Laws, 1984, ch. 503, § 17, eff from and after passage (approved May 15, 1984).

Cross References — Fraud in connection with state or federally funded assistance program, see § 97-19-71.

ARTICLE 7.

THIRD PARTY LIABILITY FOR MEDICAL PAYMENTS.

SEC.	
43-13-301.	Identification of cases involving third-party liability.
43-13-303.	Inclusion of medical support in child support enforcement orders; procedures for health insurance enrollment in child support cases; duties of health insurers and employers; withholding of reimbursement amounts from parent's state tax refund.

43-13-305. Assignment of rights against third parties; appointment of Division as attorney-in-fact; direction of payments to Division.
43-13-307. Loss of eligibility upon refusal to cooperate with Division or local agency.
43-13-309. State and federal funding.
43-13-311. Requirement of cooperation by providers.
43-13-313. Denotation on medical information furnished by provider; provider to direct copy of medical information and authorization to Division of Medicaid; effect of failure to comply.
43-13-315. Liability for failure or refusal to honor subrogation rights of Division.
43-13-317. Recovery of Medicaid payments from estate of deceased recipient; waiver of claim.

§ 43-13-301. Identification of cases involving third-party liability.

The State Department of Public Welfare shall assist the Division of Medicaid in the Office of the Governor in identifying cases involving third-party liability, including without limitation, third-party insurance benefits, health insurance or other health coverage maintained by the recipient or absent parent through intake, initial determinations, and redeterminations of eligibility, and shall promptly transmit such information to the Division of Medicaid or the fiscal agent of the Division of Medicaid.

SOURCES: Laws, 1985, ch. 497, § 1, eff from and after July 1, 1985.

Editor's Note — Section 43-1-1 provides that the term "State Department of Public Welfare" shall mean the Department of Human Services, and that the term "State Board of Public Welfare" shall mean the State Board of Human Services.

Cross References — Responsibilities of the Division of Medicaid generally, see § 43-13-121.

RESEARCH REFERENCES

Practice References. Health Care Administration Library (CD-ROM) (LexisNexis).

§ 43-13-303. Inclusion of medical support in child support enforcement orders; procedures for health insurance enrollment in child support cases; duties of health insurers and employers; withholding of reimbursement amounts from parent's state tax refund.

(1) The Department of Human Services, in administering its child support enforcement program on behalf of Medicaid and non-Medicaid recipients, or any other attorney representing a Medicaid recipient, shall include a prayer for medical support in complaints and other pleadings in obtaining a child support order whenever health-care coverage is available to the absent parent at a reasonable cost. Nothing in this section shall be construed to contradict the provisions of Section 43-19-101(6).

(2) Health insurance enrollment shall be on the form prescribed by the Department of Human Services unless a court or administrative order stipulates an alternative form of health-care coverage other than employer-based coverage. Employers must complete the employer response and return to the Department of Human Services within twenty (20) days. Employers must transfer the Medical Support Notice to Plan Administrator Part B to the appropriate group health plan providing any such health-care coverage for which the child(ren) is eligible within twenty (20) business days after the date of the notice. Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the child(ren) and send any amount withheld directly to the plan. Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must initiate withholding until such time as the employer receives notice that the contest is resolved. Employers must notify the Department of Human Services promptly whenever the noncustodial parent's employment is terminated in the same manner as required for income withholding cases.

(3) Health insurers, including, but not limited to, ERISA plans, preferred provider organizations, and HMOs, shall not have contracts that limit or exclude payments if the individual is eligible for Medicaid, is not claimed as a dependent on the federal income tax return, or does not reside with the parent or in the insurer's service area.

Health insurers and employers shall honor court or administrative orders by permitting enrollment of a child or children at any time and by allowing enrollment by the custodial parent, the Division of Medicaid, or the Child Support Enforcement Agency if the absent parent fails to enroll the child(ren).

The health insurer and the employer shall not disenroll a child unless written documentation substantiates that the court order is no longer in effect, the child will be enrolled through another insurer, or the employer has eliminated family health coverage for all of its employees.

The employer shall allow payroll deduction for the insurance premium from the absent parent's wages and pay the insurer. The health insurer and the employer shall not impose requirements on the Medicaid recipient that are different from those applicable to any other individual. The health insurer shall provide pertinent information to the custodial parent to allow the child to obtain benefits and shall permit custodial parents to submit claims to the insurer.

The health insurer and employer shall notify the Division of Medicaid and the Department of Human Services when lapses in coverage occur in court-ordered insurance. If the noncustodial parent has provided such coverage and has changed employment, and the new employer provides health-care coverage, the Department of Human Services shall transfer notice of the provision to the employer, which notice shall operate to enroll the child in the noncustodial parent's health plan, unless the noncustodial parent contests the notice. The health insurer and employer shall allow payments to the provider of medical services, shall honor the assignment of rights to third-party sources by the Medicaid recipient and the subrogation rights of the Division of Medicaid as set forth in Section 43-13-305, Mississippi Code of 1972, and shall permit payment to the custodial parent.

The employer shall allow the Division of Medicaid to garnish wages of the absent parent when such parent has received payment from the third party for medical services rendered to the insured child and such parent has failed to reimburse the Division of Medicaid to the extent of the medical service payment.

Any insurer or the employer who fails to comply with the provisions of this subsection shall be liable to the Division of Medicaid to the extent of payments made to the provider of medical services rendered to a recipient to which the third party or parties, is, are, or may be liable.

(4) The Division of Medicaid shall report to the Mississippi State Tax Commission an absent parent who has received third-party payment(s) for medical services rendered to the insured child and who has not reimbursed the Division of Medicaid for the related medical service payment(s). The Mississippi State Tax Commission shall withhold from the absent parent's state tax refund, and pay to the Division of Medicaid, the amount of the third-party payment(s) for medical services rendered to the insured child and not reimbursed to the Division of Medicaid for the related medical service payment(s).

SOURCES: Laws, 1985, ch. 497, § 2; Laws, 1994, ch. 649, § 7; Laws, 1997, ch. 588, § 139; Laws, 2003, ch. 343, § 1, eff from and after July 1, 2003.

Editor's Note — Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Provisions of the child support enforcement program, see §§ 43-19-31 et seq.

§ 43-13-305. Assignment of rights against third parties; appointment of Division as attorney-in-fact; direction of payments to Division.

(1) By accepting Medicaid from the Division of Medicaid in the Office of the Governor, the recipient shall, to the extent of the payment of medical expenses by the Division of Medicaid, be deemed to have made an assignment to the Division of Medicaid of any and all rights and interests in any third-party benefits, hospitalization or indemnity contract or any cause of action, past, present or future, against any person, firm or corporation for Medicaid benefits provided to the recipient by the Division of Medicaid for injuries, disease or sickness caused or suffered under circumstances creating a cause of action in favor of the recipient against any such person, firm or corporation as set out in Section 43-13-125. The recipient shall be deemed,

without the necessity of signing any document, to have appointed the Division of Medicaid as his or her true and lawful attorney-in-fact in his or her name, place and stead in collecting any and all amounts due and owing for medical expenses paid by the Division of Medicaid against such person, firm or corporation.

(2) Whenever a provider of medical services or the Division of Medicaid submits claims to an insurer on behalf of a Medicaid recipient for whom an assignment of rights has been received, or whose rights have been assigned by the operation of law, the insurer must respond within sixty (60) days of receipt of a claim by forwarding payment or issuing a notice of denial directly to the submitter of the claim. The failure of the insuring entity to comply with the provisions of this section shall subject the insuring entity to recourse by the Division of Medicaid in accordance with the provision of Section 43-13-315. The Division of Medicaid shall be authorized to endorse any and all, including, but not limited to, multi-payee checks, drafts, money orders or other negotiable instruments representing Medicaid payment recoveries that are received by the Division of Medicaid.

(3) Court orders or agreements for medical support shall direct such payments to the Division of Medicaid, which shall be authorized to endorse any and all checks, drafts, money orders or other negotiable instruments representing medical support payments which are received. Any designated medical support funds received by the State Department of Human Services or through its local county departments shall be paid over to the Division of Medicaid. When medical support for a Medicaid recipient is available through an absent parent or custodial parent, the insuring entity shall direct the medical support payment(s) to the provider of medical services or to the Division of Medicaid.

SOURCES: Laws, 1985, ch. 497, § 3; Laws, 1991, ch. 579, § 3; Laws, 1993, ch. 609, § 7; Laws, 2000, ch. 301, § 13, eff from and after July 1, 1999.

Editor's Note — Chapter 301 of Laws of 2000 was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 33-40.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 247-269.

§ 43-13-307. Loss of eligibility upon refusal to cooperate with Division or local agency.

Any applicant or recipient, inclusive of the grantee relative of a dependent child who refuses to cooperate with or to provide reasonable assistance to the Division of Medicaid against a liable third party in accordance with Section 43-13-125, Mississippi Code of 1972, or fails to pay over to the Division of

Medicaid third-party payments as provided in this article, or fails or refuses to cooperate with the local county department of public welfare shall not be eligible for Medicaid benefits under the Mississippi Medicaid Law.

SOURCES: Laws, 1985, ch. 497, § 4, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 33-40.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 247-269.

§ 43-13-309. State and federal funding.

The State Department of Public Welfare shall obtain an appropriation of state funds from the State Legislature in carrying out its medical support responsibilities under this article and shall organize its programs and budgets in such a manner as to secure maximum federal funding directly or through the Division of Medicaid under Title XIX of the Federal Social Security Act, as amended. If Title XIX federal funds are secured through the Division of Medicaid, such funds shall not be considered a part of the budget of the Division of Medicaid in providing medical assistance under the Mississippi Medical Assistance Act.

SOURCES: Laws, 1985, ch. 497, § 5, eff from and after July 1, 1985.

Editor's Note — Section 43-1-1 provides that the term "State Department of Public Welfare" shall mean the Department of Human Services, and that the term "State Board of Public Welfare" shall mean the State Board of Human Services.

Cross References — Provisions of the Mississippi Medical Assistance Act, see §§ 43-13-101 et seq.

Federal Aspects — Title XIX of the Federal Social Security Act, see 42 USCS §§ 1396 et seq.

§ 43-13-311. Requirement of cooperation by providers.

Providers of medical services participating in the Medicaid program shall, in submitting claims for the payment of services, identify, if known to the provider, the third party or parties who are or may be liable for the injuries, disease, or sickness of the recipient and shall cooperate with the Division of Medicaid in the recoupment of the payments from such third party or parties.

Any provider submitting claims for the payment of medical services by the Division of Medicaid, who, having knowledge of the liability or potential liability of a third party for the injuries, disease, or sickness of the recipient, fails to identify such third party or parties to the Division of Medicaid or who fails to cooperate with the Division of Medicaid in the recoupment of its payments from such third party or parties shall be liable to the Division of Medicaid to the extent of the payments made to the provider for medical assistance or services rendered to a recipient to which the third party or parties is, are, or may be liable.

SOURCES: Laws, 1985, ch. 497, § 6, eff from and after July 1, 1985.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical error in the first paragraph by substituting "in submitting claims for the payment of services" for "in committing claims for the payment of services." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Requirement that provider direct copy of medical information furnished by reason of court order, together with authorization to Division of Medicaid, see § 43-13-313.

§ 43-13-313. Denotation on medical information furnished by provider; provider to direct copy of medical information and authorization to Division of Medicaid; effect of failure to comply.

(1) In furnishing medical information to the recipient, his attorney or any other party upon written authorization, a provider participating in the Medicaid program shall denote in writing on such medical information that the patient is a Medicaid recipient and his Medicaid identification number, and if the medical charges have been paid by the Division of Medicaid, the provider shall, in addition, write or cause to be stamped or printed thereon "paid by the Division of Medicaid." If the provider has not been paid by the Division of Medicaid but seeks to bill the Division of Medicaid for medical services rendered the recipient, the provider shall denote in writing on such medical information the same information as herein provided and shall advise the recipient, his attorney, or any other party upon written authorization that it intends to bill the Division of Medicaid for medical services rendered the recipient.

(2) At the time the requested medical information is furnished to the recipient, his attorney, or other party, including medical information produced under court order, subpoena, interrogatory or deposition, the participating provider shall immediately direct a copy of the medical information so furnished or produced to the Division of Medicaid along with the authorization for the production of such information. The failure of the provider of medical services to comply with the provisions of this section shall subject the provider to recourse by the Division of Medicaid in accordance with the provisions of Section 43-13-311.

SOURCES: Laws, 1985, ch. 497, § 7; Laws, 1989, ch. 408, § 2, eff from and after July 1, 1989.

§ 43-13-315. Liability for failure or refusal to honor subrogation rights of Division.

Any person, firm, or corporation who fails or refuses to honor the subrogation rights of the Division of Medicaid and, specifically, without limitation, hospital insurance and indemnity benefits accruing to a recipient, after advanced written notice and a reasonable opportunity of responding, shall be liable to the division, should suit become necessary by the division and liability be established, for double the amount of Medicaid benefits paid by the Division of Medicaid or double the amount of the insurance policy limits, whichever is the lesser, inclusive of the assessment of a reasonable attorney's fee and all costs of court.

SOURCES: Laws, 1985, ch. 497, § 8; Laws, 1995, ch. 614, § 5, eff from and after July 1, 1995.

§ 43-13-317. Recovery of Medicaid payments from estate of deceased recipient; waiver of claim.

(1) The division shall be noticed as an identified creditor against the estate of any deceased Medicaid recipient under Section 91-7-145.

(2) In accordance with applicable federal law and rules and regulations, including those under Title XIX of the federal Social Security Act, the division may seek recovery of payments for nursing facility services, home- and community-based services and related hospital and prescription drug services from the estate of a deceased Medicaid recipient who was fifty-five (55) years of age or older when he or she received the assistance. The claim shall be waived by the division (a) if there is a surviving spouse; or (b) if there is a surviving dependent who is under the age of twenty-one (21) years or who is blind or disabled; or (c) as provided by federal law and regulation, if it is determined by the division or by court order that there is undue hardship.

SOURCES: Laws, 1994, ch. 649, § 8; Laws, 2004, ch. 593, § 7, eff from and after July 1, 2004.

Federal Aspects — Title XIX of the Social Security Act appears as 42 USCS §§ 1396 through 1396v.

JUDICIAL DECISIONS

1. Homestead exemption.

Executrix did not waive the homestead exemption by entering into a contractual relationship with the Mississippi Division of Medicaid on behalf of a decedent because the record did not support the idea that the decedent had any knowledge of the benefits a homestead exemption provided, nor that he intentionally waived his right to the benefit of that exemption since the contract did not provide any information pertaining to, or even mention, the significance of any exemption; there was no evidence of the decedent's intent to waive any of his rights because by entering into the contract, the decedent merely acknowledged Medicaid as a creditor of his estate, which estate had no property against which Medicaid could recover. State v. Stinson (In re Estate of Darby), 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

Trial court did not err in granting an executrix summary judgment and in determining that the claim of the Mississippi Division of Medicaid was not valid against a decedent's property because the decedent predeceased his children and a grandchild to whom he devised all of his property, and pursuant to the unambiguous language of Miss. Code Ann. §§ 85-3-21, 91-1-19, and 91-1-21, coupled with case law, the homestead, with its exemption, passed from the decedent to his children and grandchildren free of his debts;

thus, Medicaid was not entitled to pursue a claim against the exempted property as it was not a part of the estate. State v. Stinson (In re Estate of Darby), 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

ARTICLE 9.

HEALTH CARE TRUST FUND FOR TOBACCO SETTLEMENT FUNDS.

SEC.	
43-13-401.	Declaration of legislative intent.
43-13-403.	Definitions.
43-13-405.	Establishment of Health Care Trust Fund; fund to remain inviolate; authority to transfer certain assets of the fund if there is a reciprocal transfer into the fund [Repealed effective July 1, 2016].
43-13-407.	Establishment of Health Care Expendable Fund; annual transfers from Health Care Trust Fund; expenditures to be exclusively for health care purposes; authorization to borrow funds to offset temporary cash flow deficiencies in Expendable Fund [Subsections (1), (2), (3), (5), (6) and (7) repealed effective July 1, 2019].
43-13-409.	Board of Directors for Health Care Trust Fund and Health Care Expendable Fund; establishment; membership; powers.

§ 43-13-401. Declaration of legislative intent.

It is declared by the Legislature that the funds received by the State of Mississippi from tobacco companies in settlement of a certain lawsuit brought against those companies by the State of Mississippi, or as a result of the settlement of any lawsuit brought against tobacco companies by another state, should be applied toward improving the health and health care of the citizens and residents of the state. It is the intent of the Legislature by this article to provide the manner and means necessary to carry out those purposes.

SOURCES: Laws, 1999, ch. 493, § 1, eff from and after passage (approved Mar. 30, 1999.)

JUDICIAL DECISIONS

1. Appropriation of funds.

Chancery court order of December 22, 2000, directing that $20 million per year be given to the partnership, a non-profit organization created to reduce underage smoking, had to be vacated since it was void ab initio because it violated the state law and the tobacco settlement agreement; because the order was void ab initio, it necessarily followed that the subsequently-entered orders were likewise void, and accordingly the chancellor erred in failing to direct the partnership to pay over all remaining funds derived from the December 22, 2000, order and subsequent orders to the Mississippi Health Care Trust Fund. Hood ex rel. State Tobacco Litigation v. State, 958 So. 2d 790 (Miss. 2007).

ATTORNEY GENERAL OPINIONS

Monies appropriated from the Health Care Expendable Fund to a state agency may not be transferred to the general fund under existing law since the proceeds of the settlement of a certain lawsuit brought against tobacco companies by the state are to be held by the state in a fiduciary capacity for the benefit of the health care of the citizens of the state and monies in the expendable fund can only be spent for health care purposes. Moody, Feb. 15, 2001, A.G. Op. #2001-0120.

§ 43-13-403. Definitions.

When used in this article, the following definitions shall apply, unless the context requires otherwise:

(a) "Health Care Trust Fund" means the trust fund established by Section 43-13-405 for the deposit of the funds received by the State of Mississippi as a result of the tobacco settlement, including income from the investment of those funds.

(b) "Health Care Expendable Fund" means the fund established by Section 43-13-407 for the annual transfer of certain funds from the Health Care Trust Fund that are available for appropriation by the Legislature.

(c) "Income" means all interest and dividends derived from the investment of any tobacco settlement funds and any capital gains from the sale or exchange of those investments.

(d) "Tobacco settlement" means the settlement of the case of Mike Moore, Attorney General ex rel. State of Mississippi v. The American Tobacco Company et al. (Chancery Court of Jackson County, Mississippi, Cause No. 94-1429) and the settlement of any case brought against tobacco companies by another state.

SOURCES: Laws, 1999, ch. 493, § 2, eff from and after passage (approved Mar. 30, 1999.)

§ 43-13-405. Establishment of Health Care Trust Fund; fund to remain inviolate; authority to transfer certain assets of the fund if there is a reciprocal transfer into the fund [Repealed effective July 1, 2016].

(1) In accordance with the purposes of this article, there is established in the State Treasury the Health Care Trust Fund, into which shall be deposited Two Hundred Eighty Million Dollars ($280,000,000.00) of the funds received by the State of Mississippi as a result of the tobacco settlement as of the end of fiscal year 1999, and all tobacco settlement installment payments made in subsequent years for which the use or purpose for expenditure is not restricted by the terms of the settlement, except as otherwise provided in Section 43-13-407(2) and (3) and Section 41-113-11. All income from the investment of the funds in the Health Care Trust Fund shall be credited to the account of the Health Care Trust Fund. The funds in the Health Care Trust Fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) The Health Care Trust Fund shall remain inviolate and shall never be expended, except as provided in this article. The Legislature shall appropriate from the Health Care Trust Fund such sums as are necessary to recoup any funds lost as a result of any of the following actions:

(a) The federal Centers for Medicare and Medicaid Services, or other agency of the federal government, is successful in recouping tobacco settlement funds from the State of Mississippi;

(b) The federal share of funds for the support of the Mississippi Medicaid Program is reduced directly or indirectly as a result of the tobacco settlement;

(c) Federal funding for any other program is reduced as a result of the tobacco settlement; or

(d) Tobacco cessation programs are mandated by the federal government or court order.

(3) The State Treasurer may transfer ownership of all assets in the RMK Select Timberland 1 Portfolio of the Health Care Trust Fund to the Public Employees' Retirement System to be credited to the Public Employees' Retirement System employer's accumulation account. However, in no instance shall the State Treasurer make this transfer until a transfer equal to the monetary value of the assets in the RMK Select Timberland 1 Portfolio of the Health Care Trust Fund is made by the Public Employees' Retirement System into the Health Care Trust Fund.

(4) This section shall stand repealed on July 1, 2016.

SOURCES: Laws, 1999, ch. 493, § 3; Laws, 2002, ch. 304, § 3; Laws, 2004, ch. 571, § 1; Laws, 2006, ch. 584, § 1; Laws, 2007, ch. 514, § 19; Laws, 2009, ch. 563, § 5; Laws, 2011, ch. 469, § 5; Laws, 2011, ch. 506, § 4; Laws, 2013, ch. 518, § 2, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 5 of ch. 469, Laws of 2011, effective from and after passage (approved March 30, 2011), amended this section. Section 4 of ch. 506, Laws of 2011, effective from and after passage (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 506, Laws of 2011, which contains language that specifically provides that it supersedes § 43-13-405 as amended by Laws of 2011, ch. 469.

Editor's Note — Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

JUDICIAL DECISIONS

1. Legislative intent.
2. Appropriation of funds.

1. Legislative intent.

With regard to Miss. Code Ann. § 43-13-405(2)(d), the language of the statute is clear that the legislature shall appropriate from the Mississippi Health Care Trust Fund such sums as necessary to recoup any funds lost as a result of any tobacco cessation programs mandated by the federal government or court order, and does not grant any court authority to allocate those funds; the statute expressly states that the funds had to come from the Mississippi Health Care Trust Fund, not directly from the tobacco installment payments, and that the funds had to be appropriated by the legislature. Hood ex rel. State Tobacco Litigation v. State, 958 So. 2d 790 (Miss. 2007).

2. Appropriation of funds.

Twenty million dollars given annually to the partnership, a non-profit organization created to reduce under age smoking, was never appropriated, but instead the chancery court entered a December 2000 order on an ex parte motion by the Mississippi Attorney General; however, the chancery court was not authorized by law to make such a modification, and the tobacco installment payments were monies that unquestionably belonged to the state, and all of those payments, including the annual payments which were diverted to the partnership, should have been placed in the Mississippi Health Care Trust Fund until properly appropriated by the legislature. Hood ex rel. State Tobacco Litigation v. State, 958 So. 2d 790 (Miss. 2007).

Chancery court order of December 22, 2000, directing that $20 million per year be given to the partnership, a non-profit organization created to reduce underage smoking, had to be vacated since it was void ab initio because it violated the state law and the tobacco settlement agreement; because the order was void ab initio, it necessarily followed that the subsequently-entered orders were likewise void, and accordingly the chancellor erred in failing to direct the partnership to pay over all remaining funds derived from the December 22, 2000, order and subsequent orders to the Mississippi Health Care Trust Fund. Hood ex rel. State Tobacco Litigation v. State, 958 So. 2d 790 (Miss. 2007).

Miss. Code Ann. § 43-13-405(1) requires that all of the tobacco installment payments are to be made to the Mississippi Health Care Trust Fund unless restricted by the terms of the settlement agreement, but the settlement agreement never restricted $20 million of the tobacco installment payments for a program which was currently run by the partnership; in addition, according to the very terms of the settlement agreement, the pilot program run by the partnership was set to last for a 24-month period, and the continued funding of the initial pilot program through the partnership occurred only after an ex parte proceeding attended by the chancellor and the state attorney general. Hood ex rel. State Tobacco Litigation v. State, 958 So. 2d 790 (Miss. 2007).

§ 43-13-407. Establishment of Health Care Expendable Fund; annual transfers from Health Care Trust Fund; expenditures to be exclusively for health care purposes; authorization to borrow funds to offset temporary cash flow deficiencies in Expendable Fund [Subsections (1), (2), (3), (5), (6) and (7) repealed effective July 1, 2019].

(1) In accordance with the purposes of this article, there is established in the State Treasury the Health Care Expendable Fund, into which shall be transferred from the Health Care Trust Fund the following sums:

(a) In fiscal year 2005, Four Hundred Fifty-six Million Dollars ($456,000,000.00);

(b) In fiscal year 2006, One Hundred Eighty-six Million Dollars ($186,000,000.00);

(c) In fiscal year 2007, One Hundred Eighty-six Million Dollars ($186,000,000.00);

(d) In fiscal year 2008, One Hundred Six Million Dollars ($106,000,000.00);

(e) In fiscal year 2009, Ninety-two Million Two Hundred Fifty Thousand Dollars ($92,250,000.00);

(f) In the fiscal year beginning after the calendar year in which none of the amount of the annual tobacco settlement installment payment will be deposited into the Health Care Expendable Fund as provided in subsection (3)(d) of this section, and in each fiscal year thereafter, a sum equal to the average annual amount of the dividends, interest and other income, including increases in value of the principal, earned on the funds in the Health Care Trust Fund during the preceding four (4) fiscal years.

(2) In any fiscal year in which interest, dividends and other income from the investment of the funds in the Health Care Trust Fund are not sufficient to fund the full amount of the annual transfer into the Health Care Expendable Fund as required in subsection (1)(f) of this section, the State Treasurer shall transfer from tobacco settlement installment payments an amount that is sufficient to fully fund the amount of the annual transfer.

(3) Beginning with calendar year 2009, at the time that the State of Mississippi receives the tobacco settlement installment payment for each calendar year, the State Treasurer shall deposit the following amounts of each of those installment payments into the Health Care Expendable Fund:

(a) In calendar years 2009 and 2010, the total amount of the installment payment;

(b) In calendar year 2011, the amount of the installment payment less Ten Million Dollars ($10,000,000.00);

(c) In calendar years 2012, 2013 and 2014, the total amount of the installment payment;

(d) In calendar year 2015, and each calendar year thereafter, the total amount of the installment payment.

(4)(a) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of One Hundred Twelve Million Dollars ($112,000,000.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund in fiscal year 2011.

(b) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of Fifty-six Million Two Hundred Sixty-three Thousand Four Hundred Thirty-eight Dollars ($56,263,438.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2012.

(c) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of Ninety-seven Million Four Hundred Fifty Thousand Three Hundred Thirty-two Dollars ($97,450,332.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2013.

(d) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of Twenty-three Million One Hundred Thousand Dollars ($23,100,000.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2014.

(e) The State Fiscal Officer shall transfer the entire balance in the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2015.

(5) If Medicaid expenditures are projected to exceed the amount of funds appropriated to the Division of Medicaid in any fiscal year in excess of the expenditure reductions to providers, funds shall be transferred by the State Fiscal Officer from the Health Care Trust Fund into the Health Care Expendable Fund and then to the Governor's Office, Division of Medicaid, in the amount and at such time as requested by the Governor to reconcile the deficit.

(6) All income from the investment of the funds in the Health Care Expendable Fund shall be credited to the account of the Health Care Expendable Fund. Any funds in the Health Care Expendable Fund at the end of a fiscal year shall not lapse into the State General Fund. Any funds appropriated from the Health Care Expendable Fund that are unexpended at the end of a fiscal year shall lapse into the Health Care Expendable Fund.

(7) The funds in the Health Care Expendable Fund shall be available for expenditure under specific appropriation by the Legislature beginning in fiscal year 2000, and shall be expended exclusively for health care purposes.

(8) The provisions of subsection (1) of this section may not be changed in any manner except upon amendment to that subsection by a bill enacted by the Legislature with a vote of not less than three-fifths (3/5) of the members of each house present and voting.

(9) If the State Treasurer, in consultation with the Executive Director of the Department of Finance and Administration, determines that there is a need to borrow funds to offset any temporary cash-flow deficiencies in the Health Care Expendable Fund created in this section, the Treasurer may borrow those funds from any state-source special funds in the State Treasury in amounts that can be repaid from the Health Care Expendable Fund during the fiscal year in which the funds are borrowed. The State Treasurer shall immediately notify the Legislative Budget Office and the Department of Finance and Administration of each transfer into and out of the Health Care Expendable Fund.

(10) No later than September 30, 2011, the State Treasurer shall transfer from the Health Care Expendable Fund to the Health Care Trust Fund an amount equivalent to the unencumbered ending cash balance of the Health Care Expendable Fund as of June 30, 2011, less Three Million Eight Hundred Forty Thousand Dollars ($3,840,000.00).

(11) Subsections (1), (2), (3), (5), (6) and (7) of this section shall stand repealed on July 1, 2019.

SOURCES: Laws, 1999, ch. 493, § 4; Laws, 2002, ch. 304, § 2; Laws, 2003, ch. 424, § 1; Laws, 2004, ch. 571, § 2; Laws, 2004, ch. 595, § 12; Laws, 2005, 1st Ex Sess, ch. 1, § 1; Laws, 2006, ch. 531, § 1; Laws, 2007, ch. 560, § 1; Laws, 2008, ch. 507, § 4; Laws, 2009, 2nd Ex Sess, ch. 118, § 4; Laws, 2009, ch. 563, § 6; Laws, 2010, ch. 562, § 6; Laws, 2011, ch. 506, § 5; Laws, 2012, ch. 547, § 2; Laws, 2013, ch. 518, § 3; Laws, 2014, ch. 534, § 2; Laws, 2015, ch. 471, § 14, eff from and after passage (approved Apr. 22, 2015.)

Joint Legislative Committee Note — Section 2 of ch. 571 Laws of 2004, effective from and after June 30, 2004 (approved May 24, 2004), amended this section. Section 12 of ch. 595, Laws of 2004, effective from and after July 1, 2004 (approved May 27, 2004), also amended this section. As set out above, this section reflects the language of Section 12 of ch. 595, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 2008, ch. 507, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the "Budget Reconciliation Act of 2008."

Laws of 2014, ch. 534, § 10 provides:

"SECTION 10. This act shall take effect and be in force from and after July 1, 2014; however, Sections 4 through 8 of this act shall take effect and be in force from and after the passage of this act."

Amendment Notes — The 2014 amendment, in (1)(b), substituted "year" for "years"; in (3)(c), substituted a comma for "and" and inserted "and 2014" following "2013"; in (3)(d), substituted "2015" for "2014," inserted "total" following "year thereafter, the," and deleted the language regarding the amount of the installment payment to be deposited in 2015 from the end; made a minor stylistic change in (9); and in (11), inserted "(3)" following "Subsections (1), (2)" and extended the repealer provision from "July 1, 2016" to "July 1, 2019."

The 2015 amendment added (4)(e); and added the last sentence of (6).

ATTORNEY GENERAL OPINIONS

Monies appropriated from the Health Care Expendable Fund to a state agency may not be transferred to the general fund under existing law since the proceeds of the settlement of a certain lawsuit brought against tobacco companies by the state are to be held by the state in a fiduciary capacity for the benefit of the health care of the citizens of the state and monies in the expendable fund can only be spent for health care purposes. Moody, Feb. 15, 2001, A.G. Op. #2001-0120.

§ 43-13-409. Board of Directors for Health Care Trust Fund and Health Care Expendable Fund; establishment; membership; powers.

(1) There is established a board of directors to invest the funds in the Health Care Trust Fund and the Health Care Expendable Fund. The board of directors shall consist of thirteen (13) members as follows:

(a) Seven (7) voting members as follows: the State Treasurer or his designee, the Attorney General or his designee, and one (1) member from each congressional district to be appointed by the Governor with the advice and consent of the Senate. Of the members appointed by the Governor, one (1) member shall be appointed for an initial term that expires on March 1, 2000; one (1) member shall be appointed for an initial term that expires on March 1, 2001; one (1) member shall be appointed for an initial term that expires on March 1, 2002; one (1) member shall be appointed for an initial term that expires on March 1, 2003; and one (1) member shall be appointed for an initial term that expires on March 1, 2004. Upon the expiration of any of the initial terms of office, the Governor shall appoint successors by and with the advice and consent of the Senate for terms of five (5) years from the expiration date of the previous term. Any member appointed by the Governor shall be eligible for reappointment. Each member appointed by the Governor shall possess knowledge, skill and experience in business or financial matters commensurate with the duties and responsibilities of the board of directors in administering the Health Care Trust Fund and the Health Care Expendable Fund.

(b) Two (2) nonvoting, advisory members of the Senate shall be appointed by the Lieutenant Governor, and one (1) nonvoting, advisory representative of the health care community shall be appointed by the Lieutenant Governor, who shall serve for the length of the term of the appointing official and shall be eligible for reappointment.

(c) Two (2) nonvoting, advisory members of the House of Representatives shall be appointed by the Speaker of the House, and one (1) nonvoting, advisory representative of the health care community shall be appointed by the Speaker of the House, who shall serve for the length of the term of the appointing official and shall be eligible for reappointment.

(d) Any person appointed to fill a vacancy on the board of directors shall be appointed in the same manner as for a regular appointment and shall serve for the remainder of the unexpired term only.

(2) Nonlegislative members of the board of directors shall serve without compensation, but shall be reimbursed for each day's official duties of the board at the same per diem as established by Section 25-3-69, and actual travel and lodging expenses as established by Section 25-3-41. Legislative members of the board of directors shall receive the same per diem and expense reimbursement as for attending committee meetings when the Legislature is not in regular session.

(3) The State Treasurer shall be the chairman of the board of directors. The board of directors shall annually elect one (1) member to serve as vice chairman of the board. The vice chairman shall act as chairman in the absence of or upon the disability of the chairman or if there is a vacancy in the office of chairman.

(4) All expenses of the board of directors in carrying out its duties and responsibilities under this article, including the payment of per diem and expenses of the nonlegislative members of the board, shall be paid from funds appropriated to the State Treasurer's Office for that purpose.

(5) The board of directors shall invest the funds in the Health Care Trust Fund and the Health Care Expendable Fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9.

(6) In furtherance of the powers granted under subsection (5) of this section, the board of directors shall have such powers as necessary or convenient to carry out the purposes and provisions of this article, including, but not limited to, the following express powers:

(a) To contract for necessary goods and services, to employ necessary personnel, and to engage the services of consultants for administrative and technical assistance in carrying out its duties and responsibilities in administering the Health Care Trust Fund and the Health Care Expendable Fund;

(b) To administer the Health Care Trust Fund and the Health Care Expendable Fund in a manner that is sufficiently actuarially sound to meet the obligations of this article and to establish a comprehensive investment plan for the purposes of this article, which shall specify the investment policies to be utilized by the board of directors in administering the funds;

(c) Subject to the terms, conditions, limitations and restrictions specified in Section 37-155-9, the board of directors shall have power to sell, assign, transfer and dispose of any of the securities and investments of the Health Care Trust Fund and the Health Care Expendable Fund, provided that any such sale, assignment or transfer has the majority approval of the entire board; and

(d) To annually prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the Health Care Trust Fund and the Health Care Expendable Fund and a description of the financial condition of the funds at the close of each fiscal year, including any recommendations for legislation regarding the investment authority of the board of directors over the funds. The report shall be submitted to the Governor and the Legislative Budget Office on or before September 1 of each fiscal year.

SOURCES: Laws, 1999, ch. 493, § 5, eff from and after passage (approved Apr. 1, 1999.)

JUDICIAL DECISIONS

1. Recoupment of funds.

Motion to intervene filed by the Governor of Mississippi, the Mississippi Division of Medicaid, and the Mississippi Health Care Trust Fund could not be set aside for a perceived lack of statutory or legal authority because: (1) the Governor unquestionably had not only the statutory but also the constitutional authority to intervene since the Governor was under a solemn duty to act in order to assure faithful execution of Mississippi's laws; (2) the division had a compelling interest to see that the annual payments of $20 million were placed in the Mississippi Health Care Trust Fund because the suit was initially brought to recoup monies expended by the division; (3) the Mississippi Health Care Trust Fund was authorized to recoup funds paid to a partnership, a non-profit organization created to reduce under age smoking; and (4) the Mississippi Attorney General declined to take action. Hood ex rel. State Tobacco Litigation v. State, 958 So. 2d 790 (Miss. 2007).

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

ARTICLE 11.

DRUG REPOSITORY PROGRAM.

SEC.
43-13-501. Definitions.

43-13-503. Establishment of plan for drug repository program; eligible drugs.
43-13-505. Criteria for donating, accepting, and dispensing drugs under the program.
43-13-507. Health care professional defined; immunity for participants in program.
43-13-509. Implementation of program.

§ 43-13-501. Definitions.

As used in Sections 43-13-501 through 43-13-509, the following terms have the following meanings, unless the context requires otherwise:

(a) "Board" means the State Board of Pharmacy.

(b) "Health care facility" means any of the following:

(i) A hospital as defined under Section 41-9-3;

(ii) An institution for the aged or infirm as defined in Section 43-11-1;

(iii) A hospice as defined in Section 41-85-3;

(c) "Hospital" has the meaning as defined in Section 41-9-3.

(d) "Nonprofit clinic" means a charitable nonprofit corporation organized and operated under Section 79-11-101 et seq., or any charitable organization not organized and not operated for profit, that provides health care services to indigent and uninsured persons. "Nonprofit clinic" does not include a health care facility as defined in this section or a facility that is operated for profit.

(e) "Pharmacy" has the meaning as defined under Section 73-21-73.

(f) "Prescription drug" means any drug to which the following applies:

(i) Under the federal Food, Drug, and Cosmetic Act, as amended (21 USCS Section 301), the drug is required to bear a label containing the legend, "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to be used by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription.

(ii) Under the Uniform Controlled Substances Law, (Section 41-29-101 et seq.), the drug may be dispensed only upon a prescription.

SOURCES: Laws, 2003, ch. 543, § 9, eff from and after passage (approved Apr. 21, 2003.)

§ 43-13-503. Establishment of plan for drug repository program; eligible drugs.

(1) Not later than January 1, 2005, the State Board of Pharmacy and the State Department of Health jointly shall establish a plan for a drug repository program to accept and dispense prescription drugs donated for the purpose of being dispensed to individuals who meet the eligibility standards established in the rules adopted by the board under Section 43-13-509. The plan shall be submitted to the Chairmen of the Public Health and Welfare Committees of the Mississippi House of Representatives and Senate for their review. Under the drug repository program:

(a) Only drugs in their original sealed and tamper-evident packaging may be accepted and dispensed.

(b) The packaging must be unopened, except that drugs packaged in single unit doses may be accepted and dispensed when the outside packaging is opened if the single unit dose packaging is undisturbed.

(c) The drugs must have been properly stored such that the integrity of the medicine remains intact.

(d) A drug shall not be accepted or dispensed if there is reason to believe that it is adulterated as described in Section 75-29-3.

(e) Subject to the limitation specified in this subsection, unused drugs dispensed for the purposes of the Medicaid program may be accepted and dispensed.

(2) Nothing in subsection (1) of this section shall be construed as prohibiting a pharmacy from accepting drugs that are not eligible to be dispensed under the drug repository program, for the proper disposal of those drugs.

(3) The drug repository program shall be fully implemented not later than July 1, 2005.

SOURCES: Laws, 2003, ch. 543, § 10, eff from and after passage (approved Apr. 21, 2003.)

§ 43-13-505. Criteria for donating, accepting, and dispensing drugs under the program.

(1) Any person, including a drug manufacturer, health care facility or government entity may donate prescription drugs to the drug repository program. The drugs must be donated at a pharmacy, hospital, or nonprofit clinic that participates in the drug repository program under the criteria for participation established in the rules adopted by the board under Section 43-13-509.

(2) A pharmacy, hospital, or nonprofit clinic that participates in the drug repository program shall dispense drugs donated under this section to individuals who meet the eligibility standards established in the rules adopted by the board under Section 43-13-509, or to other government entities and nonprofit private entities to be dispensed to individuals who meet the eligibility standards. A drug may be dispensed only pursuant to a prescription issued by a licensed practitioner as defined in Section 73-21-73. A pharmacy, hospital, or nonprofit clinic that accepts donated drugs shall comply with all applicable federal laws and laws of this state dealing with storage and distribution of dangerous drugs, and shall inspect all drugs before dispensing them to determine that they are not adulterated. The pharmacy, hospital, or nonprofit clinic may charge individuals receiving donated drugs a handling fee established in accordance with the rules adopted by the board under Sections 43-13-501 through 43-13-509. Drugs donated to the repository may not be resold.

SOURCES: Laws, 2003, ch. 543, § 11, eff from and after passage (approved Apr. 21, 2003.)

§ 43-13-507. Health care professional defined; immunity for participants in program.

(1) As used in this section, the term "health care professional" means any of the following:

(a) Physicians and osteopaths licensed under Section 73-25-1 et seq.;

(b) Podiatrists licensed under Section 73-27-1 et seq.;

(c) Dentists and dental hygienists licensed under Section 73-9-1 et seq.;

(d) Optometrists licensed under Section 73-19-1 et seq.;

(e) Pharmacists licensed under Section 73-21-71 et seq.;

(f) Registered nurses and licensed practical nurses licensed under Section 73-15-1 et seq.; and

(g) Physician assistants licensed under Section 73-26-1 et seq.

(2) The State Board of Pharmacy; the State Department of Health; the Division of Medicaid; any person, including a drug manufacturer, or health care facility or government entity that donates drugs to the repository program; any pharmacy, hospital, nonprofit clinic or health care professional that accepts or dispenses drugs under the program; and any pharmacy, hospital, or nonprofit clinic that employs a health care professional who accepts or dispenses drugs under the program, shall not be subject to any of the following for matters related to donating, accepting, or dispensing drugs under the program: criminal prosecution; liability in tort or other civil action or professional disciplinary action.

A drug manufacturer shall not be subject to criminal prosecution or liability in tort or other civil action for matters related to the donation, acceptance, or dispensing of a drug manufactured by the drug manufacturer that is donated by any person, health care facility or government entity under the program, including, but not limited to, liability for failure to transfer or communicate product or consumer information, or for improper storage or for the expiration date of the donated drug.

SOURCES: Laws, 2003, ch. 543, § 12, eff from and after passage (approved Apr. 21, 2003.)

§ 43-13-509. Implementation of program.

(1) Not later than January 1, 2005, the State Board of Pharmacy, in consultation with the State Department of Health, shall adopt rules, in accordance with the Administrative Procedures Law (Section 25-43-1 et seq.), governing the drug repository program that establish all of the following:

(a) Eligibility criteria for pharmacies, hospitals and nonprofit clinics to receive and dispense donated drugs under the program;

(b) Standards and procedures for accepting, safely storing and dispensing donated drugs;

(c) Standards and procedures for inspecting donated drugs to determine that the original unit dose packaging is sealed and tamper-evident and that the drugs are unadulterated, safe and suitable for dispensing;

(d) Eligibility standards based on economic need for individuals to receive drugs;

(e) A means, such as an identification card, by which an individual who is eligible to receive donated drugs may demonstrate eligibility to the pharmacy, hospital, or nonprofit clinic dispensing the drugs;

(f) A form that an individual receiving a drug from the repository must sign before receiving the drug to confirm that the individual understands the immunity provisions of the program, and waiving all right to sue any individual or entity involved in the program;

(g) A formula to determine the amount of a handling fee that pharmacies, hospitals and nonprofit clinics may charge to drug recipients to cover restocking and dispensing costs;

(h) In addition, for drugs donated to the repository by individuals:

(i) A list of drugs, arranged either by category or by individual drug, that the repository will accept from individuals;

(ii) A list of drugs, arranged either by category or by individual drug, that the repository will not accept from individuals. The list must include a statement as to why the drug is ineligible for donation; and

(iii) A form each donor must sign stating that the donor is the owner of the drugs and intends to voluntarily donate them to the repository;

(i) In addition, for drugs donated to the repository by health care facilities or government entities:

(i) A list of drugs, arranged either by category or by individual drug, that the repository will accept from health care facilities or government entities; and

(ii) A list of drugs, arranged either by category or by individual drug, that the repository will not accept from health care facilities or government entities. The list must include a statement as to why the drug is ineligible for donation; and

(j) Any other standards and procedures the board considers appropriate.

(2) The provisions of paragraphs (h)(ii) and (i)(ii) of subsection (1) of this section shall not be construed as prohibiting a pharmacy from accepting drugs that are not eligible to be dispensed under the drug repository program, for the proper disposal of those drugs.

SOURCES: Laws, 2003, ch. 543, § 13, eff from and after passage (approved Apr. 21, 2003.)

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq., referred to in subsection (1) of this section, shall be deemed to mean and refer to Section 25-43-1.101 et seq.

ARTICLE 13.

MISSISSIPPI LONG-TERM CARE PARTNERSHIP PROGRAM.

SEC.
43-13-601. Legislative findings.
43-13-603. Definitions.
43-13-605. Mississippi Long-term Care Partnership Program created.
43-13-607. Continuity of asset protection.

§ 43-13-601. Legislative findings.

The Legislature finds that in order to alleviate the financial burden on the state's Medicaid program, the state must encourage better access to and utilization of affordable long-term care insurance that will pay for some or all of the cost of long-term care services.

SOURCES: Laws, 2014, ch. 433, § 1, eff from and after July 1, 2014.

§ 43-13-603. Definitions.

As used in this article:

(a) "Long-term care facility" means a facility required to be licensed under Section 43-11-1 et seq.

(b) "Long-term care insurance" means the same as in 26 USCS Section 7702B.

(c) "Long-term care services" means the following necessary services that originate in a setting other than an acute care hospital and that are provided to individuals whose functional capacities are chronically impaired:

(i) Physician's services;

(ii) Nursing services;

(iii) Diagnostic services;

(iv) Therapeutic services including physical therapy, speech therapy, and occupational therapy;

(v) Rehabilitative services;

(vi) Maintenance services;

(vii) Personal care services individually designed to assist with an individual's physical dependency needs related to bathing, bladder and bowel requirements, dressing, eating, personal hygiene, medications, mobility, incidental housekeeping, laundry, and shopping for personal maintenance items;

(viii) Transportation services;

(ix) Day care services;

(x) Respite care services; and

(xi) Services provided by chiropractors, podiatrists, and optometrists.

SOURCES: Laws, 2014, ch. 433, § 2, eff from and after July 1, 2014.

§ 43-13-605. Mississippi Long-term Care Partnership Program created.

(1) The Mississippi Long-Term Care Partnership Program is created within the Division of Medicaid.

(2) The Division of Medicaid in cooperation with the Insurance Commissioner shall submit applications to the United States Department of Health and Human Services necessary to obtain approval to:

(a) Establish a process for precertification of long-term care insurance policies that meets all the requirements of the program;

(b) Establish minimum requirements that long-term care insurance policies must meet in order to qualify for precertification, including without limitation:

(i) A conspicuous provision alerting consumers to the availability of consumer information and public education provided by the Division of Medicaid;

(ii) A guarantee that each insured has an option to cover home- and community-based services in addition to nursing facility care;

(iii) Inflation protection;

(iv) Periodic reporting to include explanations of benefits and a record of insurance payments that count toward Medicaid resource exclusion; and

(v) Reports to the program as the Division of Medicaid may require;

(c) Include provisions for reciprocal agreements with other states to extend the Medicaid eligibility protections in paragraph (d) of this subsection to purchasers of long-term care policies in those states, if at the time the long-term care policies were issued, the policies qualified for precertification in this state;

(d) Include provisions that Medicaid eligibility determinations in the long-term care or related waiver categories for individuals who are the beneficiaries of precertified long-term care insurance policies shall include a resource disregard of One Dollar ($1.00) for every dollar of long-term care insurance benefits paid under the individual's prequalified long-term care insurance policy for long-term care services; and

(e) Include an outreach program to educate consumers about the need for long-term care, the availability of long-term care insurance, and the asset protections available under this subsection.

SOURCES: Laws, 2014, ch. 433, § 3, eff from and after July 1, 2014.

§ 43-13-607. Continuity of asset protection.

If this article is repealed, any Medicaid asset protection afforded under Section 43-13-605 shall remain effective for the life of the individual receiving long-term care services under this article.

SOURCES: Laws, 2014, ch. 433, § 4, eff from and after July 1, 2014.

CHAPTER 14

Mississippi Statewide System of Care for Children and Youth

Sec.
43-14-1. Mississippi Statewide System of Care for children and youth; purpose; included services; Interagency Coordinating Council for Children and Youth (ICCCY) established; membership; Interagency System of Care Council (ISCC); purpose and composition; Multidisciplinary Assessment, Planning and Resource (MAP) teams; funds contributed by participating state agencies.
43-14-3. Powers and responsibilities of Council.
43-14-5. Operating fund.
43-14-7 and 43-14-9. Repealed.

§ 43-14-1. Mississippi Statewide System of Care for children and youth; purpose; included services; Interagency Coordinating Council for Children and Youth (ICCCY) established; membership; Interagency System of Care Council (ISCC); purpose and composition; Multidisciplinary Assessment, Planning and Resource (MAP) teams; funds contributed by participating state agencies.

(1) The purpose of this chapter is to provide for the development, implementation and oversight of a coordinated interagency system of necessary services and care for children and youth, called the Mississippi Statewide System of Care, up to age twenty-one (21) with serious emotional/behavioral disorders including, but not limited to, conduct disorders, or mental illness who require services from a multiple services and multiple programs system, and who can be successfully diverted from inappropriate institutional placement. The Mississippi Statewide System of Care is to be conducted in the most fiscally responsible (cost-efficient) manner possible, based on an individualized plan of care which takes into account other available interagency programs, including, but not limited to, Early Intervention Act of Infants and Toddlers, Section 41-87-1 et seq., Early Periodic Screening Diagnosis and Treatment, Section 43-13-117(A)(5), waivered program for home- and community-based services for developmentally disabled people, Section 43-13-117(A)(29), and waivered program for targeted case management services for children with special needs, Section 43-13-117(A)(31), those children identified through the federal Individuals with Disabilities Education Act of 1997 as having a serious emotional disorder (EMD), the Mississippi Children's Health Insurance Program and waivered programs for children with serious emotional disturbances, Section 43-13-117(A)(46), and is tied to clinically and functionally appropriate outcomes. Some of the outcomes are to reduce the number of inappropriate out-of-home placements inclusive of those out-of-state and to reduce the number of inappropriate school suspensions and expulsions for this population of children. This coordinated interagency system of necessary services and care shall be named the Mississippi Statewide System of Care.

Children to be served by this chapter who are eligible for Medicaid shall be screened through the Medicaid Early Periodic Screening Diagnosis and Treatment (EPSDT) and their needs for medically necessary services shall be certified through the EPSDT process. For purposes of this chapter, the Mississippi Statewide System of Care is defined as a coordinated network of agencies and providers working as a team to make a full range of mental health and other necessary services available as needed by children with mental health problems and their families. The Mississippi Statewide System of Care shall be:

(a) Child centered, family focused, family driven and youth guided;

(b) Community based;

(c) Culturally competent and responsive; and shall provide for:

(i) Service coordination or case management;

(ii) Prevention and early identification and intervention;

(iii) Smooth transitions among agencies and providers, and to the transition-age and adult service systems;

(iv) Human rights protection and advocacy;

(v) Nondiscrimination in access to services;

(vi) A comprehensive array of services composed of treatment and informal supports that are identified as best practices and/or evidence-based practices;

(vii) Individualized service planning that uses a strengths-based, wraparound process;

(viii) Services in the least restrictive environment;

(ix) Family participation in all aspects of planning, service delivery and evaluation; and

(x) Integrated services with coordinated planning across child-serving agencies.

Mississippi Statewide System of Care services shall be timely, intensive, coordinated and delivered in the community. Mississippi Statewide System of Care services shall include, but not be limited to, the following:

(a) Comprehensive crisis and emergency response services;

(b) Intensive case management;

(c) Day treatment;

(d) Alcohol and drug abuse group services for youth;

(e) Individual, group and family therapy;

(f) Respite services;

(g) Supported employment services for youth;

(h) Family education and support and family partners;

(i) Youth development and support and youth partners;

(j) Positive behavioral supports (PBIS) in schools;

(k) Transition-age supported and independent living services; and

(*l*) Vocational/technical education services for youth.

(2) There is established the Interagency Coordinating Council for Children and Youth (hereinafter referred to as the "ICCCY"). The ICCCY shall consist of the following membership:

(a) The State Superintendent of Public Education;

(b) The Executive Director of the Mississippi Department of Mental Health;

(c) The Executive Director of the State Department of Health;

(d) The Executive Director of the Department of Human Services;

(e) The Executive Director of the Division of Medicaid, Office of the Governor;

(f) The Executive Director of the State Department of Rehabilitation Services;

(g) The Executive Director of Mississippi Families as Allies for Children's Mental Health, Inc.;

(h) The Attorney General;

(i) A family member of a child or youth in the population named in this chapter designated by Mississippi Families as Allies;

(j) A youth or young adult in the population named in this chapter designated by Mississippi Families as Allies;

(k) A local MAP team coordinator designated by the Department of Mental Health;

(*l*) A child psychiatrist experienced in the public mental health system designated by the Mississippi Psychiatric Association;

(m) An individual with expertise and experience in early childhood education designated jointly by the Department of Mental Health and Mississippi Families as Allies;

(n) A representative of an organization that advocates on behalf of disabled citizens in Mississippi designated by the Department of Mental Health; and

(o) A faculty member or dean from a Mississippi university specializing in training professionals who work in the Mississippi Statewide System of Care designated by the Board of Trustees of State Institutions of Higher Learning.

If a member of the council designates a representative to attend council meetings, the designee shall bring full decision-making authority of the member to the meeting. The council shall select a chairman, who shall serve for a one-year term and may not serve consecutive terms. The council shall adopt internal organizational procedures necessary for efficient operation of the council. Each member of the council shall designate necessary staff of their departments to assist the ICCCY in performing its duties and responsibilities. The ICCCY shall meet and conduct business at least twice annually. The chairman of the ICCCY shall notify all ICCCY members and all other persons who request such notice as to the date, time, place and draft agenda items for each meeting.

(3) The Interagency System of Care Council (ISCC) is created to serve as the state management team for the ICCCY, with the responsibility of collecting and analyzing data and funding strategies necessary to improve the operation of the Mississippi Statewide System of Care, and to make recommendations to the ICCCY and to the Legislature concerning such strategies on, at a

minimum, an annual basis. The System of Care Council also has the responsibility of coordinating the local Multidisciplinary Assessment and Planning (MAP) teams and "A" teams and may apply for grants from public and private sources necessary to carry out its responsibilities. The Interagency System of Care Council shall be comprised of one (1) member from each of the appropriate child-serving divisions or sections of the State Department of Health, the Department of Human Services (Division of Family and Children Services and Division of Youth Services), the State Department of Mental Health (Division of Children and Youth, Bureau of Alcohol and Drug Abuse, and Bureau of Intellectual and Developmental Disabilities), the State Department of Education (Office of Special Education and Office of Healthy Schools), the Division of Medicaid of the Governor's Office, the Department of Rehabilitation Services, and the Attorney General's office. Additional members shall include a family member of a child, youth or transition-age youth representing a family education and support 501(c)3 organization, working with the population named in this chapter designated by Mississippi Families as Allies, an individual with expertise and experience in early childhood education designated jointly by the Department of Mental Health and Mississippi Families as Allies, a local MAP team representative and a local "A" team representative designated by the Department of Mental Health, a probation officer designated by the Department of Corrections, a family member and youth or young adult designated by Mississippi Families as Allies for Children's Mental Health, Inc., (MSFAA), and a family member other than a MSFAA representative to be designated by the Department of Mental Health and the Director of the Compulsory School Attendance Enforcement of the State Department of Education. Appointments to the Interagency System of Care Council shall be made within sixty (60) days after June 30, 2010. The council shall organize by selecting a chairman from its membership to serve on an annual basis, and the chairman may not serve consecutive terms.

(4)(a) As part of the Mississippi Statewide System of Care, there is established a statewide system of local Multidisciplinary Assessment, Planning and Resource (MAP) teams. The MAP teams shall be comprised of one (1) representative each at the county level from the major child-serving public agencies for education, human services, health, mental health and rehabilitative services approved by respective state agencies of the Department of Education, the Department of Human Services, the Department of Health, the Department of Mental Health and the Department of Rehabilitation Services. These agencies shall, by policy, contract or regulation require participation on MAP teams and "A" teams at the county level by the appropriate staff. Three (3) additional members may be added to each team, one (1) of which may be a representative of a family education/support 501(c)3 organization with statewide recognition and specifically established for the population of children defined in Section 43-14-1. The remaining members will be representatives of significant community-level stakeholders with resources that can benefit the population of children defined in Section 43-14-1. The Department of Education shall assist in recruiting and identifying parents to participate on MAP teams and "A" teams.

(b) For each local existing MAP team that is established pursuant to paragraph (a) of this subsection, there shall also be established an "A" (Adolescent) team which shall work with a MAP team. The "A" teams shall provide System of Care services for youthful offenders who have serious behavioral or emotional disorders. Each "A" team shall be comprised of, at a minimum, the following five (5) members:

(i) A school counselor, mental health therapist or social worker;
(ii) A community mental health professional;
(iii) A social services/child welfare professional;
(iv) A youth court counselor; and
(v) A parent who had a child in the juvenile justice system.

(c) The Interagency Coordinating Council for Children and Youth and the Interagency System of Care Council shall work to develop MAP teams statewide that will serve to become the single point of entry for children and youth about to be placed in out-of-home care for reasons other than parental abuse/neglect.

(5) The Interagency Coordinating Council for Children and Youth may provide input to one another and to the ISCC relative to how each agency utilizes its federal and state statutes, policy requirements and funding streams to identify and/or serve children and youth in the population defined in this section. The ICCCY shall support the implementation of the plans of the respective state agencies for comprehensive, community-based, multidisciplinary care, treatment and placement of these children.

(6) The ICCCY shall oversee a pool of state funds that may be contributed by each participating state agency and additional funds from the Mississippi Tobacco Health Care Expenditure Fund, subject to specific appropriation therefor by the Legislature. Part of this pool of funds shall be available for increasing the present funding levels by matching Medicaid funds in order to increase the existing resources available for necessary community-based services for Medicaid beneficiaries.

(7) The local interagency coordinating care MAP team or "A" team will facilitate the development of the individualized System of Care programs for the population targeted in this section.

(8) Each local MAP team and "A" team shall serve as the single point of entry and re-entry to ensure that comprehensive diagnosis and assessment occur and shall coordinate needed services through the local MAP team and "A" team members and local service providers for the children named in subsection (1). Local children in crisis shall have first priority for access to the MAP team and "A" team processes and local System of Care services.

(9) The Interagency Coordinating Council for Children and Youth shall facilitate monitoring of the performance of local MAP teams.

(10) Each ICCCY member named in subsection (2) of this section shall enter into a binding memorandum of understanding to participate in the further development and oversight of the Mississippi Statewide System of Care for the children and youth described in this section. The agreement shall outline the system responsibilities in all operational areas, including ensuring

representation on MAP teams, funding, data collection, referral of children to MAP teams and "A" teams, and training. The agreement shall be signed and in effect by July 1 of each year.

SOURCES: Laws, 1993, ch. 388, § 1; Laws, 1994, ch. 649, § 11; reenacted and amended, Laws, 1996, ch. 476, § 1; reenacted and amended, Laws, 1998, ch. 383, § 1; reenacted and amended Laws, 2000, ch. 547, § 1; Laws, 2001, ch. 591, § 1; Laws, 2005, ch. 409, § 1; Laws, 2005, ch. 471, § 2; Laws, 2010, ch. 418, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 1 of ch. 409, Laws of 2005, effective from and after July 1, 2005 (approved March 16, 2005), amended this section. Section 2 of ch. 471, Laws of 2005, effective July 1, 2005 (approved April 1, 2005), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 471, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (3) by substituting "Enforcement of the State Department of Education" for "Emforcement of the State Department of Education" The Joint Committee ratified the correction at its August 1, 2013, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected internal references in subsection (1) by substituting "Section 43-13-117(A)(5)" for "Section 43-13-117(5)," "Section 43-13-117(A)(29)" for "Section 43-13-117(29)," "Section 43-13-117(A)(31)" for "Section 43-13-117(31)" and "Section 43-13-117(A)(46)" for "Section 43-13-117(46)." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Editor's Note — Laws of 1993, ch. 388, § 7, eff from and after July 1, 1993, provides as follows:

"SECTION 7. This act shall take effect and be in force from and after July 1, 1993, and shall be implemented after appropriate federal waivers have been obtained. However, subsections (2) and (5) of Section 1 of this act shall take effect and be in force from and after the passage of this act."

Cross References — Medicaid reimbursement for medically necessary services for children who are determined eligible for program established in this section, see § 43-13-117.

§ 43-14-3. Powers and responsibilities of Council.

In addition to the specific authority provided in Section 43-14-1, the powers and responsibilities of the Interagency Coordinating Council for Children and Youth shall be as follows:

(a) To serve in an advisory capacity and to provide state level leadership and oversight to the development of the Mississippi Statewide System of Care; and

(b) To insure the creation and availability of an annual pool of funds from each participating agency member of the ICCCY that includes the amount to be contributed by each agency and a process for utilization of those funds.

SOURCES: Laws, 1993, ch. 388, § 2; reenacted and amended, Laws, 1996, ch. 476, § 2; reenacted without change, Laws, 1998, ch. 383, § 2; reenacted without change, Laws, 2000, ch. 547, § 2; Laws, 2001, ch. 591, § 2; Laws, 2005, ch. 409, § 2; Laws, 2010, ch. 418, § 2, eff from and after July 1, 2010.

Editor's Note — Laws of 1993, ch. 388, § 7, eff from and after July 1, 1993, provides as follows:

"SECTION 7. This act shall take effect and be in force from and after July 1, 1993, and shall be implemented after appropriate federal waivers have been obtained. However, subsections (2) and (5) of Section 1 of this act shall take effect and be in force from and after the passage of this act."

Cross References — Medicaid reimbursement for medically necessary services for children who are determined eligible for program established in this section, see § 43-13-117.

§ 43-14-5. Operating fund.

There is created in the State Treasury a special fund into which shall be deposited all funds contributed by the Department of Human Services, State Department of Health, Department of Mental Health, State Department of Rehabilitation Services insofar as recipients are otherwise eligible under the Rehabilitation Act of 1973, as amended, and State Department of Education for the operation of a statewide System of Care by MAP teams and "A" teams utilizing such funds as may be made available to those MAP teams through a Request for Proposal (RFP) approved by the ICCCY.

SOURCES: Laws, 1993, ch. 388, § 3; Laws, 1994, ch. 649, § 12; reenacted and amended, Laws, 1996, ch. 476, § 3; reenacted and amended, Laws, 1998, ch. 383, § 3; reenacted without change, Laws, 2000, ch. 547, § 3; Laws, 2001, ch. 591, § 3; Laws, 2005, ch. 409, § 3; Laws, 2005, ch. 471, § 3; Laws, 2010, ch. 418, § 3, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 3 of ch. 409, Laws of 2005, effective from and after July 1, 2005 (approved March 16, 2005), amended this section. Section 3 of ch. 471, Laws of 2005, effective July 1, 2005 (approved April 1, 2005), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 471, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 1993, ch. 388, § 7, eff from and after July 1, 1993, provides as follows:

"SECTION 7. This act shall take effect and be in force from and after July 1, 1993, and shall be implemented after appropriate federal waivers have been obtained. However, subsections (2) and (5) of Section 1 of this act shall take effect and be in force from and after the passage of this act."

Cross References — Medicaid reimbursement for medically necessary services for children who are determined eligible for program established in this section, see § 43-13-117.

Federal Aspects — Rehabilitation Act of 1973, see 29 USCS §§ 701 et seq.

§§ 43-14-7 and 43-14-9. Repealed.

Repealed by Laws, 2001, ch. 591, § 4, eff from and after June 30, 2001.

§ 43-14-7. [Laws, 1993, ch. 388, § 4; Laws, 1994, ch. 649, § 13; reenacted and amended, Laws, 1996, ch. 476, § 4; reenacted without change, Laws, 1998, ch. 383, § 4; reenacted without change, Laws, 2000, ch. 547, § 4.]

§ 43-14-9. [Laws, 1993, ch. 388, § 6; Laws, 1996, ch. 476, § 5; Laws, 1998, ch. 383, § 5; Laws, 2000, ch. 547, § 5.]

Editor's Note — Former § 43-14-7 provided for services and eligibility under the blended funding formula formerly administered by the Children's Advisory Council.

Former § 43-14-9 contained the automatic repealer for §§ 43-14-1 through 43-14-7.

CHAPTER 15

Child Welfare

Article 1. Administration of Child Welfare 43-15-1
Article 2. Multidisciplinary Child Protection Teams 43-15-51
Article 3. Licensing of Family Foster Homes, Child-caring Agencies and Child-placing Agencies 43-15-101
Article 5. Baby Drop-off Law 43-15-201
Article 7. Restrictions On Employment By Or Operation Of Child Care Facilities By Registered Sex Offenders 43-15-301

Article 1.

Administration of Child Welfare.

Sec.
43-15-1. Title of article.
43-15-3. Powers and duties of Department of Human Services; appeal to Director of Division of Family and Children's Services for denial of foster care and/or adoption assistance.
43-15-5. Administration of child welfare services.
43-15-6. Criminal background checks and child abuse registry checks for providers of children's services in residential setting; authority to exclude certain crimes as disqualifying from providing child care; penalties; administrative immunity.
43-15-7. County department authorized to provide protective services; appropriation of funds.
43-15-9. Article inapplicable to orphans' homes, etc.
43-15-11. Expenditure of county and municipal moneys for support and maintenance of homeless and destitute children.
43-15-13. Foster care placement program; objectives; system of individualized plans and reviews; training program for persons who provide foster care and relative care; placement priorities and goals; changes in placement; notice to families; rights and responsibilities of persons who provide foster care and relative care.
43-15-15. Registry of children in custody of State Department of Public Welfare and public or private agencies.
43-15-17. Payments for supportive services; relative care payments.
43-15-19. Adoption resource exchange registry.
43-15-21. Penalty for releasing confidential information.
43-15-23. "Placing Out"; defined.
43-15-25. Elected officials as foster parents; payments on behalf of foster child.

§ 43-15-1. Title of article.

This article may be cited as the "Administration of Child Welfare Law."

SOURCES: Codes, 1942, § 7170-06; Laws, 1946, ch. 419, § 6.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed the words "this chapter" to be "this article." The Joint Committee ratified the correction at its June 29, 2000, meeting.

Cross References — Licensing of family foster homes, child-caring agencies and child-placing agencies, see § 43-15-101 et seq.

Effect of Department of Youth Services Law (Ch. 27 of Title 43) on §§ 43-15-1 through 43-15-9, see § 43-27-33.

Aid to dependent children, see §§ 43-17-1 et seq.

Federal Aspects — Victims of Child Abuse Act of 1990, P. L. 101-647 §§ 201 et seq., see 42 USCS 13001 et seq.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 206 et seq.

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions (Michie).

§ 43-15-3. Powers and duties of Department of Human Services; appeal to Director of Division of Family and Children's Services for denial of foster care and/or adoption assistance.

The Department of Human Services is hereby authorized, empowered and directed to cooperate fully with the United States Children's Bureau and Secretary of Labor in establishing, extending and strengthening "child welfare services" for the protection and care of homeless, dependent and neglected children and children in danger of becoming delinquent. Said Department of Human Services is further authorized, empowered and directed to cooperate with the United States Children's Bureau and Secretary of Labor in developing plans for said "child welfare services" and extending any other cooperation necessary under Section 521 of Public Law No. 271-74th Congress of the United States.

In furtherance of the "child welfare services" referred to in the first paragraph hereof the State Treasurer is hereby authorized and directed to receive on behalf of the state, and to execute all instruments incidental thereto, federal or other funds to be used for "child welfare services," and to place such funds in a special account to the credit of the "child welfare services," which said funds shall be expended by the Department of Human Services for the purposes and under the provisions of this article and Section 521 of Public Law No. 271-74th Congress of the United States. It shall be paid out by the State Treasurer as funds appropriated to carry out the provisions of said laws.

The Department of Human Services shall issue all checks on said "child welfare services" fund to persons entitled to payment from said fund. All such sums shall be drawn upon the "child welfare services" fund upon requisition of the Director of the Department of Human Services.

The money in the "child welfare services" fund shall be expended in accordance with the rules and regulations of the United States Children's Bureau and Secretary of Labor and in accordance with the plan developed by the Department of Human Services and the United States Children's Bureau under Section 521 of Public Law No. 271-74th Congress of the United States, and shall not be used for any other purpose.

If a claim for foster care and/or adoption assistance under Title IV-E of the Federal Social Security Act is not acted upon within a reasonable time after the filing of the claim, or is denied in whole or in part, the claimant may appeal to the Director of the Division of Family and Children's Services in the manner and form prescribed by the Department of Human Services. The Director of the Division of Family and Children's Services shall, upon receipt of such an appeal, give the claimant reasonable notice and opportunity for a fair hearing. The Director of the Division of Family and Children's Services may also, upon his or her own motion, review any decision regarding a claim, and may consider any claim upon which a decision has not been made within a reasonable time. All decisions of the Director of Family and Children's Services shall be final and binding.

SOURCES: Codes, 1942, § 7169; Laws, 1936, 1st Ex Sess, ch. 12.; Laws, 2000, ch. 380, § 1, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed the words "this chapter" to be "this article." The Joint Committee ratified the correction at its June 29, 2000 meeting.

Cross References — State department of public welfare, generally, see § 43-1-1.

Disclosure of records of public assistance payments and disbursements, see § 43-1-19.

Youth court, see §§ 43-21-45, 43-21-101 et seq.

State central registry on child neglect and abuse cases, and confidentiality of child abuse reports, see § 43-21-257.

Penalty for disclosure of confidential information in child abuse state central registry, see §§ 43-21-257, 43-21-267.

Institution of proceedings in youth court involving child abuse, see §§ 43-21-357, 43-21-451.

Maintenance by department of human services of statewide incoming wide area telephone service for reporting child abuse, see § 43-21-353.

Federal Aspects — Title IV-E of the Social Security Act appears as 42 USCS §§ 670 through 679c.

JUDICIAL DECISIONS

1. In general.

Federal Law governing Aid to Families with Dependent Children (AFDC) program does not prohibit state from grouping all needy children living in same household under care of one relative into single unit for purposes of eligibility and benefits determinations even where such grouping results in decreases in maximum per capita AFDC benefits to some families. Anderson v. Edwards, 514 U.S. 143, 115 S. Ct. 1291, 131 L. Ed. 2d 178 (1995).

§ 43-15-5. Administration of child welfare services.

(1) The Department of Human Services shall have authority and it shall be its duty to administer or supervise all public child welfare services,

including those services, responsibilities, duties and powers with which the county departments of human services are charged and empowered in this article; administer and supervise the licensing and inspection of all private child placing agencies; provide for the care of dependent and neglected children in foster family homes or in institutions, supervise the care of such children and those of illegitimate birth; supervise the importation of children; and supervise the operation of all state institutions for children. The Department of Human Services shall be authorized to purchase hospital and medical insurance coverage for those children placed in foster care by the state or county departments of human services who are not otherwise eligible for medical assistance under the Mississippi Medicaid Law. The Department of Human Services shall be further authorized to purchase burial or life insurance not exceeding One Thousand Five Hundred Dollars ($1,500.00) for those children placed in foster care by the state or county departments of human services. All insurance coverage authorized herein may be purchased with any funds other than state funds available to the Department of Human Services, including those funds available to the child which are administered by the department.

(2) Any person, partnership, group, corporation, organization or association desiring to operate a child residential home, as defined in Section 43-16-3, may make application for a license for such a facility to the Department of Human Services on the application forms furnished for this purpose by the department. If an applicant meets the published rules and regulations of the department regarding minimum standards for a child residential home, then the applicant shall be granted a license by the department.

SOURCES: Codes, 1942, § 7170-01; Laws, 1938, ch. 172; Laws, 1946, ch. 419, § 1; Laws, 1978, ch. 443, § 1(1); Laws, 1982, ch. 416; Laws, 1989, ch. 493, § 13, eff from and after July 1, 1989.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in this section. The words "this chapter" in (1) have been changed to "this article." The words "State Department of Public Welfare" appearing throughout this section have been changed to "Department of Human Services." The words "county departments of public welfare" appearing throughout (1) have been changed to "county departments of human services." The Joint Committee ratified these corrections at its June 29, 2000, meeting.

Editor's Note — Laws of 1992, ch. 439, § 1, effective from and after July 1, 1992, provides as follows:

"SECTION 1. (1) The State Department of Human Services is hereby authorized and directed to compile all existing statutes and agency regulations relating to children's matters, rights and programs and to publish same in a Compendium of Mississippi Children's Laws and Regulations for the use of legal practitioners, agency personnel and the general public.

"(2) The Department of Human Services shall be responsible for implementing this section only to the extent that monies are appropriated by the Legislature for that purpose or made available through grants from the federal government or other sources."

Cross References — Youth court, see §§ 43-21-45, 43-21-101 et seq.

State department of public welfare, generally, see § 43-1-1.

Persons entitled to receive medical assistance under Mississippi Medicaid Law, see § 43-13-115.

Acceptance of compensation for "placing out" a child, see § 43-15-23.

Residential homes licensed by State under this section not a child residential home for purposes of Child Residential Home Notification Act, see § 43-16-3.

Certain child residential homes to apply for license pursuant to this section, see § 43-16-7.

JUDICIAL DECISIONS

1. Ministerial duties.

In a child's suit against the Mississippi Department of Human Services (DHS), failure to properly investigate a child's allegations of sexual abuse by an employee of a youth care facility was a ministerial act for which DHS could be held liable. Miss. Dep't of Human Servs. v. S.W., 974 So. 2d 253 (Miss. Ct. App. 2007).

RESEARCH REFERENCES

ALR. Right of putative father to custody of illegitimate child. 45 A.L.R.3d 216.

Am Jur. 14 Am. Jur. Pl & Pr Forms (Rev), Infants, Form 142.1 (complaint, petition, or declaration — by guardian ad litem — against state — negligent placement of foster child — child abuse).

24 Am. Jur. Proof of Facts 2d 169, Circumstances Warranting Court-Ordered Medical Treatment of Minors.

§ 43-15-6. Criminal background checks and child abuse registry checks for providers of children's services in residential setting; authority to exclude certain crimes as disqualifying from providing child care; penalties; administrative immunity.

(1) Any person, institution, facility, clinic, organization or other entity that provides services to children in a residential setting where care, lodging, maintenance, and counseling or therapy for alcohol or controlled substance abuse or for any other emotional disorder or mental illness is provided for children, whether for compensation or not, that holds himself, herself, or itself out to the public as providing such services, and that is entrusted with the care of the children to whom he, she, or it provides services, because of the nature of the services and the setting in which the services are provided shall be subject to the provisions of this section.

(2) Each entity to which this section applies shall complete, through the appropriate governmental authority, a national criminal history record information check and a child abuse registry check for each owner, operator, employee, prospective employee, volunteer or prospective volunteer of the entity and/or any other that has or may have unsupervised access to a child served by the entity. In order to determine the applicant's suitability for employment, the entity shall ensure that the applicant be fingerprinted by local law enforcement, and the results forwarded to the Department of Public Safety. If no disqualifying record is identified at the state level, the fingerprints

shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(3) An owner, operator, employee, prospective employee, volunteer or prospective volunteer of the entity and/or any other that has or may have unsupervised access to a child who has a criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children as set forth in this chapter may not provide child care or operate, or be licensed as, a residential child care program, foster parent, or foster home.

(4) All fees incurred in compliance with this section shall be borne by the individual or entity to which subsection (1) applies.

(5) The Department of Human Services shall have the authority to set fees, to exclude a particular crime or crimes or a substantiated finding of child abuse and/or neglect as disqualifying individuals or entities from providing foster care or residential child care, and adopt such other rules and regulations as may be required to carry out the provisions of this section.

(6) Any entity that violates the provisions of this section by failure to complete sex offense criminal history record information and felony conviction record information checks, as required under subsection (3) of this section, shall be subject to a penalty of up to Ten Thousand Dollars ($10,000.00) for each such violation and may be enjoined from further operation until it complies with this section in actions maintained by the Attorney General.

(7) The Department of Human Services and/or its officers, employees, attorneys, agents and representatives shall not be held civilly liable for any findings, recommendations or actions taken pursuant to this section.

SOURCES: Laws, 1989, ch. 559, § 1; Laws, 1998, ch. 516, § 5; Laws, 2000, ch. 434, § 1, eff from and after July 1, 2000.

Cross References — Acquisition of felony conviction and child abuse registry records of owners, employees, and others on premises of child care facilities, see § 43-20-8.

Restrictions on employment by or operation of child care facilities by registered sex offenders, see §§ 43-15-301 et seq.

ATTORNEY GENERAL OPINIONS

The Department of Mental Health has the authority to determine the necessary qualifications for its employees and may, in doing so, fingerprint and have background checks performed on employees who will not provide services to the children under jurisdiction of that entity. Hendrix, Oct. 6, 2000, A.G. Op. #2000-0583.

§ 43-15-7. County department authorized to provide protective services; appropriation of funds.

The county department of public welfare is hereby authorized to provide protective services for children as will conserve home life; assume responsibility for the care and support of dependent children needing public care away from their homes; place children found by the department to be dependent or without proper care in suitable institutions or private homes, and cooperate with public and private institutions and agencies in placing such children in suitable institutions or private homes; accept custody or guardianship, through one of its designated employees, of any child, when appointed as custodian or guardian in the manner provided by law.

The board of supervisors in each county is hereby empowered, in its discretion, to set aside and appropriate out of the tax levied and collected to support the poor of the county or out of the county general fund necessary monies to be administered by the county department of public welfare to carry out the provisions of this section.

SOURCES: Codes, 1942, § 7170-02; Laws, 1946, ch. 419, § 2.

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

County departments of public welfare, generally, see § 43-1-9.

JUDICIAL DECISIONS

1. In general.

In exercising the jurisdiction conferred by Code 1942, section 7361, on boards of supervisors to bind out as apprentices poor orphans and children whose parents are unable to support them, it is only necessary that the citation be served on the minor in person. Moore v. Allen, 72 Miss. 273, 16 So. 600 (1894).

The board of supervisors in each county has jurisdiction of poor orphans therein, and is authorized to direct the supervisors of the district in which any such orphans are to bind them out. Board of Supvrs. v. Leigh, 69 Miss. 754, 13 So. 854 (1892).

Where a board makes an order directing one of its members to procure a home for certain poor orphans in the county, and the custody is withheld from him, he may obtain the custody of the children by habeas corpus that they may be dealt with according to law. Board of Supvrs. v. Leigh, 69 Miss. 754, 13 So. 854 (1892).

ATTORNEY GENERAL OPINIONS

Under Section 43-1-12, the board of supervisors has the authority to make a contribution of county funds to the child care and placement services program administered by the county department of human services. Smith, February 23, 1995, A.G. Op. #95-0048.

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 7 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 206 et seq.

Law Reviews. Best Practices in the Response to Child Abuse, 25 Miss. C. L. Rev. 73, Fall, 2005.

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions (Michie).

§ 43-15-9. Article inapplicable to orphans' homes, etc.

None of the provisions of this article shall apply to any orphan's home, child caring agency or children's home society under the jurisdiction of and maintained by any fraternal organization, religious or fraternal denomination or nonprofit association or corporation organized and exclusively controlled by any religious denomination.

SOURCES: Codes, 1942, § 7170-03; Laws, 1946, ch. 419, § 3.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed the words "this chapter" to be "this article." The Joint Committee ratified the correction at its June 29, 2000, meeting.

§ 43-15-11. Expenditure of county and municipal moneys for support and maintenance of homeless and destitute children.

(1) The board of supervisors of any county and/or the mayor and board of commissioners of any city and/or the mayor and board of aldermen of any municipality in this state are hereby authorized and empowered, in their discretion, to expend out of any moneys in their respective treasuries, to be drawn by warrant thereon, a sum or sums of money not exceeding a total of twenty-five dollars ($25.00) annually per million dollars ($1,000,000.00) of the assessed valuation of the real and personal property thereof for the purpose of providing for the care, support and maintenance of homeless or destitute children of any county or municipality of this state who are supported, cared for, maintained and placed for adoption by any children's home society which operates over and serves the entire State of Mississippi, and which is approved and licensed by the Mississippi Department of Public Welfare.

(2) The authority granted in this section is supplemental of and in addition to all existing authority for the expenditure of funds by such boards of supervisors and municipal governing authorities.

SOURCES: Codes, 1942, § 7170-21; Laws, 1958, ch. 539, §§ 1-3, eff upon passage (approved May 6, 1958).

Cross References — Department of Public Welfare as meaning the Department of Human Services, see § 43-1-1.

§ 43-15-13. Foster care placement program; objectives; system of individualized plans and reviews; training program for persons who provide foster care and relative care; placement priorities and goals; changes in placement; notice to families; rights and responsibilities of persons who provide foster care and relative care.

(1) For purposes of this section, "children" means persons found within the state who are under the age of twenty-one (21) years, and who were placed in the custody of the Department of Human Services by the youth court of the appropriate county.

(2) The Department of Human Services shall establish a foster care placement program for children whose custody lies with the department, with the following objectives:

(a) Protecting and promoting the health, safety and welfare of children;

(b) Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

(c) Remedying or assisting in the solution of problems that may result in the neglect, abuse, exploitation or delinquency of children;

(d) Restoring to their families children who have been removed, by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

(e) Placing children in suitable adoptive homes approved by a licensed adoption agency or family protection specialist, in cases where restoration to the biological family is not safe, possible or appropriate;

(f) Assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the department shall implement concurrent planning, as described in subsection (8) of this section, so that permanency may occur at the earliest opportunity. Consideration of possible failure or delay of reunification should be given, to the end that the placement made is the best available placement to provide permanency for the child; and

(g) Providing a family protection specialist or worker or team of such specialists or workers for a family and child throughout the implementation of their permanent living arrangement plan. Wherever feasible, the same family protection specialist or worker or team shall remain on the case until the child is no longer under the jurisdiction of the youth court.

(3) The Department of Human Services shall administer a system of individualized plans and reviews once every six (6) months for each child under its custody within the State of Mississippi, each child who has been adjudged a neglected, abandoned or abused child and whose custody was changed by court order as a result of that adjudication, and each public or private facility

licensed by the department. The Department of Human Services administrative review shall be completed on each child within the first three (3) months and a foster care review once every six (6) months after the child's initial forty-eight-hour shelter hearing. That system shall be for the purpose of enhancing potential family life for the child by the development of individual plans to return the child to its natural parent or parents, or to refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home. The goal of the Department of Human Services shall be to return the child to its natural parent(s) or refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home within the time periods specified in this subsection or in subsection (4) of this section. In furthering this goal, the department shall establish policy and procedures designed to appropriately place children in permanent homes, the policy to include a system of reviews for all children in foster care, as follows: foster care counselors in the department shall make all possible contact with the child's natural parent(s), custodial parent(s) of all siblings of the child, and any interested relative for the first two (2) months following the child's entry into the foster care system. For purposes of contacting custodial parent(s) of a sibling, siblings include those who are considered a sibling under state law, and those who would have been considered a sibling under state law, except for termination or disruption of parental rights. For any child who has been in foster care for fifteen (15) of the last twenty-two (22) months regardless of whether the foster care was continuous for all of those twenty-two (22) months, the department shall file a petition to terminate the parental rights of the child's parents. The time period starts to run from the date the court makes a finding of abuse and/or neglect or sixty (60) days from when the child was removed from his or her home, whichever is earlier. The department can choose not to file a termination of parental rights petition if the following apply:

(a) The child is being cared for by a relative; and/or

(b) The department has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child. Before granting or denying a request by the department for an extension of time for filing a termination of parental rights action, the court shall receive a written report on the progress which a parent of the child has made in treatment, to be made to the court in writing by a mental health/substance abuse therapist or counselor.

(4) In the case of any child who is placed in foster care on or after July 1, 1998, except in cases of aggravated circumstances prescribed in Section 43-21-603(7)(c), the child's natural parent(s) will have a reasonable time to be determined by the court, which shall not exceed a six-month period of time, in which to meet the service agreement with the department for the benefit of the child unless the department has documented extraordinary and compelling reasons for extending the time period in the best interest of the child. If this agreement has not been satisfactorily met, simultaneously the child will be

referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home. For children under the age of three (3) years, termination of parental rights shall be initiated within six (6) months, unless the department has documented compelling and extraordinary circumstances, and placement in a permanent relative's home, adoptive home or foster/adoptive home within two (2) months. For children who have been abandoned under the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody or long-term or formalized foster care by a court of competent jurisdiction.

(5) The foster care review once every six (6) months shall be conducted by the youth court or its designee(s), and/or by personnel within the Department of Human Services or by a designee or designees of the department and may include others appointed by the department, and the review shall include at a minimum an evaluation of the child based on the following:

(a) The extent of the care and support provided by the parents or parent, while the child is in temporary custody;

(b) The extent of communication with the child by parents, parent or guardian;

(c) The degree of compliance by the agency and the parents with the social service plan established;

(d) The methods of achieving the goal and the plan establishing a permanent home for the child;

(e) Social services offered and/or utilized to facilitate plans for establishing a permanent home for the child; and

(f) Relevant testimony and recommendations from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

Each child's review plan once every six (6) months shall be filed with the court which awarded custody and shall be made available to natural parents or foster parents upon approval of the court. The court shall make a finding as to the degree of compliance by the agency and the parent(s) with the child's social service plan. The court also shall find that the child's health and safety are the paramount concern. In the interest of the child, the court shall, where appropriate, initiate proceedings on its own motion. The Department of Human Services shall report to the Legislature as to the number of those children, the findings of the foster care review board and relevant statistical information in foster care in a semiannual report to the Legislature to be submitted to the Joint Oversight Committee of the Department of Human Services. The report shall not refer to the specific name of any child in foster care.

(6) The Department of Human Services, with the cooperation and assistance of the State Department of Health, shall develop and implement a training program for foster care parents to indoctrinate them as to their proper responsibilities upon a child's entry into their foster care. The program shall provide a minimum of twelve (12) clock hours of training. The foster care training program shall be satisfactorily completed by such foster care parents before or within ninety (90) days after child placement with the parent. Record of the foster care parent's training program participation shall be filed with the court as part of a foster care child's review plan once every six (6) months.

(7) When the Department of Human Services is considering placement of a child in a foster home and when the department deems it to be in the best interest of the child, the department shall give first priority to placing the child in the home of one (1) of the child's relatives within the third degree, as computed by the civil law rule. In placing the child in a relative's home, the department may waive any rule, regulation or policy applicable to placement in foster care that would otherwise require the child to have a separate bed or bedroom or have a bedroom of a certain size, if placing the child in a relative's home would be in the best interest of the child and those requirements cannot be met in the relative's home.

(8) The Legislature recognizes that the best interests of the child require that the child be placed in the most permanent living arrangement as soon as is practicably possible. To achieve this goal, the Department of Human Services is directed to conduct concurrent planning so that a permanent living arrangement may occur at the earliest opportunity. Permanent living arrangements may include prevention of placement of a child outside the home of the family when the child can be cared for at home without endangering the child's health or safety; reunification with the family, when safe and appropriate, if temporary placement is necessary; or movement of the child toward the most permanent living arrangement and permanent legal status. When a child is placed in foster care or relative care, the department shall first ensure and document that reasonable efforts were made to prevent or eliminate the need to remove the child from the child's home. The department's first priority shall be to make reasonable efforts to reunify the family when temporary placement of the child occurs or shall request a finding from the court that reasonable efforts are not appropriate or have been unsuccessful. A decision to place a child in foster care or relative care shall be made with consideration of the child's health, safety and best interests. At the time of placement, consideration should also be given so that if reunification fails or is delayed, the placement made is the best available placement to provide a permanent living arrangement for the child. The department shall adopt rules addressing concurrent planning for reunification and a permanent living arrangement. The department shall consider the following factors when determining appropriateness of concurrent planning:

(a) The likelihood of prompt reunification;
(b) The past history of the family;
(c) The barriers to reunification being addressed by the family;

(d) The level of cooperation of the family;

(e) The foster parents' willingness to work with the family to reunite;

(f) The willingness and ability of the foster family or relative placement to provide an adoptive home or long-term placement;

(g) The age of the child; and

(h) Placement of siblings.

(9) If the department has placed a child in foster care or relative care under a court order, the department may not change the child's placement unless the department specifically documents to the court that the current placement is unsafe or unsuitable or that another placement is in the child's best interests unless the new placement is in an adoptive home or other permanent placement. Except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303, the foster parents, grandparents or other relatives of the child shall be given an opportunity to contest the specific reasons documented by the department at least seventy-two (72) hours before any such departure, and the court may conduct a review of that placement unless the new placement is in an adoptive home or other permanent placement. When a child is returned to foster care or relative care, the former foster parents or relative placement shall be given the prior right of return placement in order to eliminate additional trauma to the child.

(10) The Department of Human Services shall provide the foster parents, grandparents or other relatives with at least a seventy-two-hour notice of departure for any child placed in their foster care or relative care, except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303. The parent/legal guardian, grandparents of the child, guardian ad litem and the court exercising jurisdiction shall be notified in writing when the child leaves foster care or relative care placement, regardless of whether the child's departure was planned or unplanned. The only exceptions to giving a written notice to the parent(s) are when a parent has voluntarily released the child for adoption or the parent's legal rights to the child have been terminated through the appropriate court with jurisdiction.

(11) The Department of Human Services shall extend the following rights to persons who provide foster care and relative care:

(a) A clear understanding of their role while providing care and the roles of the birth parent(s) and the placement agency in respect to the child in care;

(b) Respect, consideration, trust and value as a family who is making an important contribution to the agency's objectives;

(c) Involvement in all the agency's crucial decisions regarding the child as team members who have pertinent information based on their day-to-day knowledge of the child in care;

(d) Support from the family protection worker or the family protection specialist in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:

(i) Pertinent information about the child and the birth family;

(ii) Help in using appropriate resources to meet the child's needs;

(iii) Direct interviews between the family protection worker or specialist and the child, previously discussed and understood by the foster parents;

(e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;

(f) The opportunity to learn and grow in their vocation through planned education in caring for the child;

(g) The opportunity to be heard regarding agency practices that they may question;

(h) Reimbursement for costs of the child's care in the form of a board payment based on the age of the child as prescribed in Section 43-15-17; and

(i) Reimbursement for property damages caused by children in the custody of the Department of Human Services in an amount not to exceed Five Hundred Dollars ($500.00), as evidenced by written documentation. The Department of Human Services shall not incur liability for any damages as a result of providing this reimbursement.

(12) The Department of Human Services shall require the following responsibilities from participating persons who provide foster care and relative care:

(a) Understanding the department's function in regard to the foster care and relative care program and related social service programs;

(b) Sharing with the department any information which may contribute to the care of children;

(c) Functioning within the established goals and objectives to improve the general welfare of the child;

(d) Recognizing the problems in home placement that will require professional advice and assistance and that such help should be utilized to its full potential;

(e) Recognizing that the family who cares for the child will be one of the primary resources for preparing a child for any future plans that are made, including return to birth parent(s), termination of parental rights or reinstitutionalization;

(f) Expressing their view of agency practices which relate to the child with the appropriate staff member;

(g) Understanding that all information shared with the persons who provide foster care or relative care about the child and his/her birth parent(s) must be held in the strictest of confidence;

(h) Cooperating with any plan to reunite the child with his birth family and work with the birth family to achieve this goal; and

(i) Attending dispositional review hearings and termination of parental rights hearings conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

SOURCES: Laws, 1978, ch. 443, § 1(2)(3); Laws, 1979, ch. 506, § 70; Laws, 1982, ch. 318; Laws, 1989, ch. 412, § 1; Laws, 1997, ch. 603, § 1; Laws, 1998, ch. 516, § 3; Laws, 1999, ch. 569, § 1; Laws, 2000, ch. 381, § 1; Laws, 2001, ch. 479, § 1; Laws, 2006, ch. 600, § 2; Laws, 2008, ch. 538, § 1; Laws, 2015, ch. 402, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2)(e). The letter "e" has been inserted between the formerly empty parentheses. The Joint Committee ratified the correction at its May 16, 2002, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (4) by substituting "Section 43-21-603(7)(c)" for "Section 41-21-603(7)(c) or (d)." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Editor's Note — Laws of 1979, ch. 506, § 79, effective from and after July 1, 1979, provides as follows:

"SECTION 79. This act shall apply only to offenses committed after the effective date of this act."

Amendment Notes — The 2015 amendment, in (3), inserted "custodial parent(s) of all siblings of the child" in the fifth sentence, and added the sixth sentence.

Cross References — State department of public welfare, generally, see § 43-1-1.

Services enumerated under this section for the foster care program shall be provided by qualified staff with appropriate case loads, see § 43-1-51.

Penalty for releasing confidential information, see § 43-15-21.

Youth court generally, see §§ 43-21-1 et seq.

JUDICIAL DECISIONS

1. In general.

Mother, whose parental rights had been terminated, argued that the Department of Human Services (DHS) failed to implement a reasonable plan for family reunification; however, the appellate court noted that the lower court and DHS gave more time to comply with a service agreement than what Miss. Code Ann. § 43-15-13 allowed. In re S.T.M.M., 942 So. 2d 266 (Miss. Ct. App. 2006).

Termination of the mother's parental rights was appropriate pursuant to Miss. Code Ann. § 43-15-13(3) and Miss. Code Ann. § 93-15-105(1) because the Department of Human Services (DHS) had the statutory duty to file for termination of the mother's parental rights even though the mother was still in the legal custody of the DHS. In the Interest of C.B.Y., 936 So. 2d 974 (Miss. Ct. App. 2006).

The statute does not provide for the court to be bound by the Department of Human Services's consent or the lack thereof to the adoption of a child in its custody. L.W. v. C.W.B., 762 So. 2d 323 (Miss. 2000).

RESEARCH REFERENCES

ALR. Foster parent's right to immunity from foster child's negligence claims. 55 A.L.R.4th 778.

Am Jur. 14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-15-15. Registry of children in custody of State Department of Public Welfare and public or private agencies.

The State Department of Public Welfare shall maintain a registry of children whose custody lies with them and private or public agencies licensed by the department. Said registry shall contain classifications of children as:

(a) Temporary custody for evaluation, not to exceed three (3) months;

(b) Temporary custody not to exceed one (1) year with the plan to return custody to the natural parents;

(c) Temporary custody, not to exceed two (2) years, with a plan to free for adoption;

(d) Children freed for adoption;

(e) Children ages fourteen (14) and above who have voluntarily chosen not to be adopted and cannot be returned to their own homes; and

(f) Children who are institutionalized and for whom placement in an adoptive home is not feasible.

SOURCES: Laws, 1978, ch. 443, § 1(4), eff from and after passage (approved March 28, 1978).

Cross References — State Department of Public Welfare, as meaning Department of Human Services, see § 43-1-1.

State central registry on child neglect and abuse cases, see § 43-21-257.

Adoption proceedings generally, see §§ 93-17-1 et seq.

§ 43-15-17. Payments for supportive services; relative care payments.

(1) The Department of Human Services is authorized to make such payments as may be appropriate for supportive services to facilitate either the return of children to their natural parents or their adoption, depending upon and contingent upon the availability of the Department of Human Services securing or having sufficient funds to render this supportive service. Upon court order, the parent(s) shall be responsible for reimbursing the department for any foster care or kinship care payments made on behalf of his or her child, based upon financial ability to pay, until such time as there is a termination of parental rights regarding the child, or the child is adopted.

(2) For those children placed in foster care by the state or county departments of human services, the department shall make monthly payments for the support of these children's room and board, clothing, allowance and personal needs. From and after July 1, 1998, and subject to the availability of funds specifically appropriated therefor, the Department of Human Services' foster care and therapeutic care monthly payment schedule in effect before that date shall be increased by One Hundred Dollars ($100.00) per month, with that minimum payment not to preclude the department from increasing payments in later years as funds become available. From and after July 1, 1998, in order for foster parents to receive the monthly payments authorized under this subsection (2), the Department of Human Services shall require

foster care placements to be licensed as foster care homes and shall require prospective foster parents to satisfactorily complete an appropriate training program that emphasizes the goal of the foster care program to provide stable foster placement until a permanency outcome is achieved.

(3) For a child placed in the care of the child's relative within the third degree by the state or county departments of human services, the department shall make monthly payments to defray the relative's expense of furnishing room and board. The department's relative care payment shall be in an amount up to one hundred percent (100%) of the amount of the foster care board payment. The department may continue to make those payments to the relative after the department relinquishes legal custody of the child to the relative. Any such payments for relative care shall be subject to specific appropriation therefor by the Legislature.

SOURCES: Laws, 1978, ch. 443, § 1(5); Laws, 1998, ch. 516, § 4; Laws, 2007, ch. 480, § 1; Laws, 2008, ch. 538, § 2, eff from and after July 1, 2008.

§ 43-15-19. Adoption resource exchange registry.

(1) The State Department of Public Welfare shall maintain a Mississippi Adoption Resource Exchange registry, which shall contain a total listing of all children freed for adoption as well as a listing of all persons who wish to adopt children and who are approved by a licensed adoption agency in the State of Mississippi. Said registry shall be distributed to all county welfare directors and licensed adoption agencies within the state and shall be updated at least quarterly. The State Department of Public Welfare shall establish regulations for listing descriptive characteristics while protecting the privacy of the children's names. Listed names shall be removed when adoption placement plans are made for a child or when a person withdraws an application for adoption.

(2) Adoptive parents shall be given the option of having their names placed in the registry. They shall be required to give written authority to the county welfare department to place their names in the registry and said authorization shall be forwarded to the state department of public welfare, division of social services, for approval.

SOURCES: Laws, 1978, ch. 443, § 1(6)(7), eff from and after passage (approved March 28, 1978).

Cross References — State Department of Public Welfare, as meaning the Department of Human Services, see § 43-1-1.

State central registry on child neglect and abuse cases, see § 43-21-257.

Adoption proceedings generally, see §§ 93-17-1 et seq.

RESEARCH REFERENCES

Practice References. Joan H. Hollinger, Adoption Law and Practice (Matthew Bender).

§ 43-15-21. Penalty for releasing confidential information.

Anyone violating or releasing information of a confidential nature without the approval of the court with jurisdiction or the State Department of Public Welfare upon being found guilty shall be guilty of a misdemeanor and subject to a fine of no more than one thousand dollars ($1,000.00) or imprisonment of six (6) months, or both.

SOURCES: Laws, 1978, ch. 443, § 1(8), eff from and after passage (approved March 28, 1978).

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

Penalty for disclosure of confidential information in child abuse state central registry, see §§ 43-21-257, 43-21-267.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 43-15-23. "Placing Out"; defined.

(1) As used in this section the term "placing out" means to arrange for the free care of a child in a family, other than that of the child's parent, stepparent, grandparent, brother, sister, uncle or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care.

(2) No person, agency, association, corporation, institution, society or other organization, except a child placement agency licensed by the Department of Public Welfare under Section 43-15-5, shall request, receive or accept any compensation or thing of value, directly or indirectly, for placing out of a child.

(3) No person shall pay or give any compensation or thing of value, directly or indirectly, for placing out of a child to any person, agency, association, corporation, institution, society or other organization except a child placement agency licensed by the Department of Public Welfare.

(4) The provisions of this section shall not be construed to (a) prevent the payment of salaries or other compensation by a child placement agency licensed by the Department of Public Welfare to the officers or employees thereof; (b) prevent the payment of legal fees, which have been approved by the chancery court, to an attorney for services performed in regard to adoption proceedings; (c) prevent the payment of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth or medical treatment of such child to the physician or hospital which rendered the services; or (d) prevent the receipt of such payments by such attorney, physician or hospital.

(5) Any person, agency, association, corporation, institution, society or other organization violating the provisions of this section shall be guilty of illegal placement of children and shall be punished by a fine not to exceed Five Thousand Dollars ($5,000.00) or by imprisonment not more than five (5) years, or both such fine and imprisonment.

SOURCES: Laws, 1986, ch. 456, eff from and after July 1, 1986.

Editor's Note — Section 43-1-1 provides that the term "State Department of Public Welfare" shall mean the Department of Human Services, and that the term "State Board of Public Welfare" shall mean the State Board of Human Services.

JUDICIAL DECISIONS

1. Construction.
2. Thing of value.
3. Conviction reversed.

1. Construction.

In the context of Miss. Code Ann. § 43-15-23, the word "arrange" means to place in proper, desired, or convenient order, to come to an agreement or understanding regarding, and to prepare or plan. Balouch v. State, 938 So. 2d 253 (Miss. 2006).

2. Thing of value.

In order to prove defendant guilty of placing out a child, the state need only prove defendant directly or indirectly requested a thing of value, and Miss. Code Ann. § 43-15-23 does not require defendant actually receive anything of value. Balouch v. State, 938 So. 2d 253 (Miss. 2006).

3. Conviction reversed.

Defendant's conviction of illegal placement of a child for compensation was reversed; based upon the testimony of the complainants, the State clearly failed to meet its burden of proving the requisite compensation element essential to a conviction under Miss. Code Ann. § 43-15-23. Each of the witnesses testified that defendant informed him/her that the $ 5,000 would be used for an attorney's paperwork and plane fare, and defendant never at any time requested compensation for herself. Balouch v. State, 938 So. 2d 262 (Miss. Ct. App. 2005), reversed by 938 So. 2d 253, 2006 Miss. LEXIS 535 (Miss. 2006).

§ 43-15-25. Elected officials as foster parents; payments on behalf of foster child.

An elected official shall not be precluded from serving as a foster parent under this act [Chapter 516, Laws of 1998], and any payments on behalf of or for the benefit of a foster child shall not be considered a contract of interest or compensation or financial income to the elected official in violation of Section 109 of the Mississippi Constitution or any related statutes.

SOURCES: Laws, 1998, ch. 516, § 21, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 516, added Sections 43-15-25, 93-17-6 and 93-17-8, and amended various sections. For a list of code sections affected by Laws of 1998, ch. 516, see Statutory Tables Volume, Table B, Allocation of Acts.

ARTICLE 2.

MULTIDISCIPLINARY CHILD PROTECTION TEAMS.

SEC.	
43-15-51.	Formation of multidisciplinary child protection teams to evaluate and investigate reports of child abuse and neglect; membership; order of Youth Court prerequisite to formation of teams; participation by experts and child advocacy centers; disclosure of information obtained from task force meetings prohibited.

§ 43-15-51. Formation of multidisciplinary child protection teams to evaluate and investigate reports of child abuse and neglect; membership; order of Youth Court prerequisite to formation of teams; participation by experts and child advocacy centers; disclosure of information obtained from task force meetings prohibited.

(1) The district attorneys or the Department of Human Services may initiate formal cooperative agreements with the appropriate agencies to create multidisciplinary child protection teams in order to implement a coordinated multidisciplinary team approach to intervention in reports involving alleged severe or potential felony child physical or sexual abuse, exploitation, or maltreatment. The multidisciplinary team also may be known as a child abuse task force. The purpose of the team or task force shall be to assist in the evaluation and investigation of reports and to provide consultation and coordination for agencies involved in child protection cases. The agencies to be included as members of the multidisciplinary team are: the district attorney's office, city and county law enforcement agencies, county attorneys, youth court prosecutors, and other agencies as appropriate.

(2) To implement the multidisciplinary child abuse team, the team or task force must be authorized by court order from the appropriate Youth Court. The court order will designate which agencies will participate in the cooperative multidisciplinary team.

(3)(a) Teams created under this section may invite other persons to serve on the team who have knowledge of and experience in child abuse and neglect matters. These persons may include licensed mental and physical health practitioners and physicians, dentists, representatives of the district attorney's office and the Attorney General's office, experts in the assessment and treatment of substance abuse or sexual abuse, the victim assistance coordinator of the district attorney's office and staff members of a child advocacy center.

(b)(i) A child advocacy center means an agency that advocates on behalf of children alleged to have been abused and assists in the coordination of the investigation of child abuse by providing a location for forensic interviews and promoting the coordination of services for children alleged to have been abused. A child advocacy center provides services that include, but are not limited to, forensic medical examinations, mental health and related support services, court advocacy, consultation, training for social workers, law enforcement training, and child abuse multidisciplinary teams; and staffing of multidisciplinary teams.

(ii) Child advocacy centers may provide a video-taped forensic interview of the child in a child friendly environment or separate building. The purpose of the video-taped forensic interview is to prevent further trauma to a child in the investigation and prosecution of child physical and sexual abuse cases. Child advocacy centers can also assist child victims by providing therapeutic counseling subsequent to the interview by a qualified therapist. Child advocacy centers can also assist law enforcement and prosecutors by acquainting child victim witnesses and their parents or guardians to the courtroom through child court school programs.

(4) A team or task force created under this section shall review records on cases referred to the team by the Department of Human Services or law enforcement or the district attorney's office. The team shall meet at least monthly.

(5) No person shall disclose information obtained from a meeting of the multidisciplinary team unless necessary to comply with Department of Human Services' regulations or conduct and proceeding in Youth Court or criminal court proceedings or as authorized by a court of competent jurisdiction.

SOURCES: Laws, 2002, ch. 339, § 1, eff from and after July 1, 2002.

Cross References — Penalty for releasing confidential information, see § 43-15-21.

Penalty for disclosure of confidential information in child abuse state central registry, see §§ 43-21-257, 43-21-267.

Youth Court, see §§ 43-21-101 et seq.

RESEARCH REFERENCES

Law Reviews. Best Practices in the Response to Child Abuse, 25 Miss. C. L. Rev. 73, Fall, 2005.

ARTICLE 3.

LICENSING OF FAMILY FOSTER HOMES, CHILD-CARING AGENCIES AND CHILD-PLACING AGENCIES.

SEC.

43-15-101. Purpose.
43-15-103. Definitions.
43-15-105. Division of Family and Children's Services to be licensing authority; duties.
43-15-107. Licensure requirements.
43-15-109. Information on application for license; information received through reports, complaints, investigations and inspections classified as "public".
43-15-111. Exemptions from licensure requirements.
43-15-113. Reinstatement of license following revocation.
43-15-115. Inspections of facilities.
43-15-117. General restrictions; advertising restrictions; no licensing requirement for attorney providing legal services in connection with adoption; regulation of fees; written disclosure of fees and charges.
43-15-119. Disciplinary proceedings.
43-15-121. Injunctions.
43-15-123. Criminal penalties.
43-15-125. Immunity for Department of Human Services and its employees.

§ 43-15-101. Purpose.

The purpose of this article is to protect the health, safety and well-being of all children in the state who are cared for by family foster homes, residential child-caring agencies and child-placing agencies by providing for the establishment of licensing requirements for such homes and agencies and providing procedures to determine adherence to these requirements.

SOURCES: Laws, 2000, ch. 379, § 1, eff from and after July 1, 2000.

Cross References — Child welfare, see § 43-15-1 et seq.
Application for license to operate a child residential home, see § 43-15-5.
Child residential home notification, see § 43-16-1 et seq.
Licensure fees for residential child care facilities, see § 43-16-25.

§ 43-15-103. Definitions.

As used in this article:

(a) "Agency" means a residential child-caring agency or a child-placing agency.

(b) "Child" or "children" mean(s) any unmarried person or persons under the age of eighteen (18) years.

(c) "Child placing" means receiving, accepting or providing custody or care for any child under eighteen (18) years of age, temporarily or permanently, for the purpose of:

(i) Finding a person to adopt the child;

(ii) Placing the child temporarily or permanently in a home for adoption; or

(iii) Placing a child in a foster home or residential child-caring agency.

(d) "Child-placing agency" means any entity or person which places children in foster boarding homes or foster homes for temporary care or for adoption or any other entity or person or group of persons who are engaged in providing adoption studies or foster care studies or placement services as defined by the rules of the department.

(e) "Department" means the Mississippi Department of Human Services.

(f) "Director" means the Director of the Division of Family and Children's Services.

(g) "Division" means the Division of Family and Children's Services within the Mississippi Department of Human Services.

(h) "Family boarding home" or "foster home" means a home (occupied residence) operated by any entity or person which provides residential child care to at least one (1) child but not more than six (6) children who are not related to the primary caregivers.

(i) "Group care home" means any place or facility operated by any entity or person which provides residential child care for at least seven (7) children but not more than twelve (12) children who are not related to the primary caregivers.

(j) "Licensee" means any person, agency or entity licensed under this article.

(k) "Maternity home" means any place or facility operated by any entity or person which receives, treats or cares for more than one (1) child or adult who is pregnant out of wedlock, either before, during or within two (2) weeks after childbirth; provided, that the licensed child-placing agencies and licensed maternity homes may use a family boarding home approved and supervised by the agency or home, as a part of their work, for as many as three (3) children or adults who are pregnant out of wedlock, and provided further, that the provisions of this definition shall not include children or women who receive maternity care in the home of a person to whom they are kin within the sixth degree of kindred computed according to civil law, nor does it apply to any maternity care provided by general or special hospitals licensed according to law and in which maternity treatment and care are part of the medical services performed and the care of children is brief and incidental.

(*l*) "Office" means the Office of Licensing within the Division of Family and Children's Services of the Mississippi Department of Human Services.

(m) "Person associated with a licensee" means an owner, director, member of the governing body, employee, provider of care and volunteer of a human services licensee.

(n) "Related" means children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces or nephews of the primary care provider.

(o) "Residential child care" means the provision of supervision, and/or protection, and meeting the basic needs of a child for twenty-four (24) hours per day, which may include services to children in a residential setting where care, lodging, maintenance and counseling or therapy for alcohol or controlled substance abuse or for any other emotional disorder or mental illness is provided for children, whether for compensation or not.

(p) "Residential child-caring agency" means any place or facility operated by any entity or person, public or private, providing residential child care, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, and emergency shelters that are not in private residence.

SOURCES: Laws, 2000, ch. 379, § 2, eff from and after July 1, 2000.

§ 43-15-105. Division of Family and Children's Services to be licensing authority; duties.

(1) The Division of Family and Children's Services shall be the licensing authority for the department, and is vested with all the powers, duties and

responsibilities described in this article. The division shall make and establish rules and regulations regarding:

(a) Approving, extending, denying, suspending and revoking licenses for foster homes, residential child-caring agencies and child-placing agencies;

(b) Conditional licenses, variances from department rules and exclusions;

(c) Basic health and safety standards for licensees; and

(d) Minimum administration and financial requirements for licensees.

(2) The division shall:

(a) Define information that shall be submitted to the division with an application for a license;

(b) Establish guidelines for the administration and maintenance of client and service records, including staff qualifications, staff to client ratios;

(c) Issue licenses in accordance with this article;

(d) Conduct surveys and inspections of licensees and facilities;

(e) Establish and collect licensure fees;

(f) Investigate complaints regarding any licensee or facility;

(g) Have access to all records, correspondence and financial data required to be maintained by a licensee or facility;

(h) Have authority to interview any client, family member of a client, employee or officer of a licensee or facility; and

(i) Have authority to revoke, suspend or extend any license issued by the division.

SOURCES: Laws, 2000, ch. 379, § 3, eff from and after July 1, 2000.

Cross References — Licensure requirements, see § 43-15-107.

§ 43-15-107. Licensure requirements.

(1) Except as provided in Section 43-15-111, no person, agency, firm, corporation, association or other entity, acting individually or jointly with any other person or entity, may establish, conduct or maintain foster homes, residential child-caring agencies and child-placing agencies or facility and/or engage in child placing in this state without a valid and current license issued by and under the authority of the division as provided by this article and the rules of the division. Any out-of-state child-placing agency that provides a full range of services, including, but not limited to, adoptions, foster family homes, adoption counseling services or financial aid, in this state must be licensed by the division under this article.

(2) No license issued under this article is assignable or transferable.

(3) A current license shall at all times be posted in each licensee's facility, in a place that is visible and readily accessible to the public.

(4)(a) Except as otherwise provided in paragraph (b) of this subsection, each license issued under this article expires at midnight (Central Standard Time) twelve (12) months from the date of issuance unless it has been:

(i) Previously revoked by the office; or

(ii) Voluntarily returned to the office by the licensee.

(b)(i) For any child-placing agency located in Mississippi that remains in good standing, the license issued under this article expires at midnight (Central Standard Time) twenty-four (24) months from the date of issuance unless it has been:

1. Previously revoked by the office; or
2. Voluntarily returned to the office by the licensee.

(ii) Any child-placing agency whose license is governed by this paragraph (b) shall submit the following information to the office annually:

1. A copy of an audit report and IRS Form 990 for the agency;
2. The agency's fee schedule; and
3. The agency's client list.

(c) A license may be renewed upon application and payment of the applicable fee, provided that the licensee meets the license requirements established by this article and the rules and regulations of the division.

(5) Any licensee or facility which is in operation at the time rules are made in accordance with this article shall be given a reasonable time for compliance as determined by the rules of the division.

SOURCES: Laws, 2000, ch. 379, § 4; Laws, 2007, ch. 496, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of paragraph (1). The word "the" was inserted preceding "division under this article." The Joint Committee ratified the correction at its June 26, 2007, meeting.

Cross References — Exemptions from licensing requirement, see § 43-15-11.

Reinstatement of license following revocation, see § 43-15-113.

§ 43-15-109. Information on application for license; information received through reports, complaints, investigations and inspections classified as "public".

(1) An application for a license under this article shall be made to the division and shall contain information that the division determines is necessary in accordance with established rules.

(2) Information received by the office through reports, complaints, investigations and inspections shall be classified as public in accordance with Title 25, Chapter 61, Mississippi Code of 1972, Mississippi Public Records Act.

SOURCES: Laws, 2000, ch. 379, § 5, eff from and after July 1, 2000.

Cross References — Public access to public records, see §§ 25-61-1 et seq.

§ 43-15-111. Exemptions from licensure requirements.

The provisions of this article do not apply to:

(1) A facility or program owned or operated by an agency of the State of Mississippi or United States government;

(2) A facility or program operated by or under an exclusive contract with the Department of Corrections;

(3) Schools and educational programs and facilities the primary purpose of which is to provide a regular course of study necessary for advancement to a higher educational level or completion of a prescribed course of study, and which may, incident to such educational purposes, provide boarding facilities to the students of such programs.

(4) Any residential child-caring agency and/or child-placing agency operated or conducted under the auspices of a religious institution and meeting the requirements or conditions of this section shall be exempt from the licensure requirements of this article under the following conditions: (a) such religious institution must have a tax exempt status as a nonprofit religious institution in accordance with Section 501(c) of the Internal Revenue Code of 1954, as amended, or the real property owned and exclusively occupied by the religious institution must be exempt from location taxation, and (b) the agency or institution must be in compliance with the requirements of the Child Residential Home Notification Act, Section 43-16-1 et seq., Mississippi Code of 1972, and must not be in violation of Section 43-16-21(c) regarding the abuse and/or neglect of any child served by such home who has been adjudicated by the youth court as an abused and/or neglected child. Nothing in this subsection shall prohibit a residential child-caring agency or child-placing agency operated by or conducted under the auspices of a religious institution from obtaining a license pursuant to this article.

SOURCES: Laws, 2000, ch. 379, § 6, eff from and after July 1, 2000.

Cross References — Youth court generally, see §§ 43-21-1 et seq.

Federal Aspects — Section 501(c) of the Internal Revenue Code of 1954 is codified as 26 USCS § 501(c).

"Section 501(c) of the Internal Revenue Code of 1954," referred to in (4), is codified at 26 USCS § 501(c).

ATTORNEY GENERAL OPINIONS

The Harrison County Youth Court Shelter is not an "unlicensed" facility and is, instead, an exempt facility. Wilson, July 23, 2002, A.G. Op. #02-0349.

§ 43-15-113. Reinstatement of license following revocation.

(1) If a license is revoked, the division may grant a new license after:

(a) Satisfactory evidence is submitted to the division, evidencing that the conditions upon which revocation was based have been corrected; and

(b) Inspection and compliance with all provisions of this article and applicable rules.

(2) The division may only suspend a license for a period of time which does not exceed the current expiration date of that license.

(3) When a license has been suspended, the division may completely or partially restore the suspended license upon a determination that the:

(a) Conditions upon which the suspension was based have been completely or partially corrected; and

(b) Interests of the public will not be jeopardized by restoration of the license.

SOURCES: Laws, 2000, ch. 379, § 7, eff from and after July 1, 2000.

§ 43-15-115. Inspections of facilities.

(1) The division may, for the purpose of ascertaining compliance with the provisions of this article and its rules and regulations, enter and inspect on a routine basis the facility of a licensee.

(2) Before conducting an inspection under subsection (1), the division shall, after identifying the person in charge:

(a) Give proper identification;

(b) Request to see the applicable license;

(c) Describe the nature and purpose of the inspection; and

(d) If necessary, explain the authority of the division to conduct the inspection and the penalty for refusing to permit the inspection.

(3) In conducting an inspection under subsection (1), the division may, after meeting the requirements of subsection (2):

(a) Inspect the physical facilities;

(b) Inspect records and documents;

(c) Interview directors, employees, clients, family members of clients and others; and

(d) Observe the licensee in operation.

(4) An inspection conducted under subsection (1) shall be during regular business hours and may be announced or unannounced.

(5) The licensee shall make copies of inspection reports available to the public upon request.

(6) The provisions of this section apply to on-site inspections and do not restrict the division from contacting family members, neighbors or other individuals, or from seeking information from other sources to determine compliance with the provisions of this article.

SOURCES: Laws, 2000, ch. 379, § 8, eff from and after July 1, 2000.

§ 43-15-117. General restrictions; advertising restrictions; no licensing requirement for attorney providing legal services in connection with adoption; regulation of fees; written disclosure of fees and charges.

(1) Except as provided in this article, no person, agency, firm, corporation, association or group children's home may engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the division. No out-of-state child-placing agency that provides a full range of services, including, but not limited to, adoptions, foster family homes, adoption counseling services or financial aid, may operate in this state without a valid license issued by the division. No child-placing agency shall advertise in the media markets in Mississippi seeking birth mothers or their children for adoption purposes unless the agency holds a valid and current license issued either by the division or the authorized governmental licensing agency of another state that regulates child-placing agencies. Any child-placing agency, physician or attorney who advertises for child placing or adoption services in Mississippi shall be required by the division to show their principal office location on all media advertising for adoption services.

(2) An attorney who provides legal services to a client in connection with proceedings for the adoption of a child by the client, who does not receive, accept or provide custody or care for the child for the purposes specified in Section 43-15-103(c), shall not be required to have a license under this article to provide those legal services.

(3) An attorney, physician or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for that assistance.

(4) Nothing in this section precludes payment of reasonable fees for medical, legal or other lawful services rendered in connection with the care of a mother, delivery and care of a child including, but not limited to, the mother's living expenses, or counseling for the parents and/or the child, and for the legal proceedings related to lawful adoption proceedings; and no provision of this section abrogates the right of procedures for independent adoption as provided by law.

(5) The division is specifically authorized to promulgate rules under the Administrative Procedures Law, Title 25, Chapter 43, Mississippi Code of 1972, to regulate fees charged by licensed child-placing agencies, if it determines that the practices of those licensed child-placing agencies demonstrates that the fees charged are excessive or that any of the agency's practices are deceptive or misleading; however, those rules regarding fees shall take into account the use of any sliding fee by an agency that uses a sliding fee procedure to permit prospective adoptive parents of varying income levels to utilize the services of those agencies or persons.

(6) The division shall promulgate rules under the Administrative Procedures Law, Title 25, Chapter 43, Mississippi Code of 1972, to require that all

licensed child-placing agencies provide written disclosures to all prospective adoptive parents of any fees or other charges for each service performed by the agency or person, and file an annual report with the division that states the fees and charges for those services, and to require them to inform the division in writing thirty (30) days in advance of any proposed changes to the fees or charges for those services.

(7) The division is specifically authorized to disclose to prospective adoptive parents or other interested persons any fees charged by any licensed child-placing agency, attorney or counseling service or counselor for all legal and counseling services provided by that licensed child-placing agency, attorney or counseling service or counselor.

SOURCES: Laws, 2000, ch. 379, § 9; Laws, 2004, ch. 527, § 3; Laws, 2005, ch. 476, § 1; Laws, 2007, ch. 496, § 2, eff from and after July 1, 2007.

Cross References — Agency adoption of rules describing its organization and rules of practice, see § 25-43-5.

§ 43-15-119. Disciplinary proceedings.

(1) If the division finds that a violation has occurred under this article or the rules and regulations of the division, it may:

(a) Deny, suspend or revoke a license or place the licensee on probation, if the division discovers that a licensee is not in compliance with the laws, standards or regulations governing its operation, and/or it finds evidence of aiding, abetting or permitting the commission of any illegal act; or

(b) Restrict or prohibit new admissions to the licensee's program or facility, if the division discovers that a licensee is not in compliance with the laws, standards or regulations governing its operation, and/or it finds evidence of aiding, abetting or permitting the commission of any illegal act.

(2) If placed on probation, the agency or licensee shall post a copy of the notice in a conspicuous place as directed by the division and with the agency's or individual's license, and the agency shall notify the custodians of each of the children in its care in writing of the agency's status and the basis for the probation.

SOURCES: Laws, 2000, ch. 379, § 10, eff from and after July 1, 2000.

§ 43-15-121. Injunctions.

In addition to, and notwithstanding, any other remedy provided by law, the division may, in a manner provided by law and upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the division in the proceedings, maintain an action in the name of the state for injunction or other process against any person or entity to restrain or prevent the establishment, management or operation of a program or facility or performance of services in violation of this article or rules of the division.

SOURCES: Laws, 2000, ch. 379, § 11; Laws, 2012, ch. 546, § 17, eff from and after July 1, 2012.

§ 43-15-123. Criminal penalties.

Any person, agency, association, corporation, institution, society or other organization violating the provisions of this article shall be guilty of illegal placement of children and shall be punished by a fine not to exceed Five Thousand Dollars ($5,000.00) or by imprisonment not more than five (5) years, or both such fine and imprisonment.

SOURCES: Laws, 2000, ch. 379, § 12, eff from and after July 1, 2000.

§ 43-15-125. Immunity for Department of Human Services and its employees.

The Department of Human Services and/or its officers, employees, attorneys and representatives shall not be held civilly liable for any findings, recommendations or actions taken pursuant to this article.

SOURCES: Laws, 2000, ch. 379, § 13, eff from and after July 1, 2000.

ARTICLE 5.

BABY DROP-OFF LAW.

SEC.

43-15-201. Emergency medical services provider to take possession of certain abandoned children; guarantee of anonymity of parent surrendering baby under baby drop-off law.
43-15-203. Notification to Department of Human Services that provider has taken possession of abandoned child; department to assume care, control, and custody of child upon receipt of notification.
43-15-205. Affirmative defense to crime of child abandonment.
43-15-207. Definition of "emergency medical services provider".
43-15-209. Immunity from liability.

§ 43-15-201. Emergency medical services provider to take possession of certain abandoned children; guarantee of anonymity of parent surrendering baby under baby drop-off law.

(1) An emergency medical services provider, without a court order, shall take possession of a child who is seventy-two (72) hours old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

(2) The parent who surrenders the baby shall not be required to provide any information pertaining to his or her identity, nor shall the emergency medical services provider inquire as to same. If the identity of the parent is known to the emergency medical services provider, the emergency medical services provider shall keep the identity confidential.

(3) A female presenting herself to a hospital through the emergency room or otherwise, who is subsequently admitted for purposes of labor and delivery, does not give up the legal protections or anonymity guaranteed under this section. If the mother clearly expresses a desire to voluntarily surrender custody of the newborn after birth, the emergency medical services provider can take possession of the child, without further action by the mother, as if the child had been presented to the emergency medical services provider in the same manner outlined above in subsection (1) of this section.

(a) If the mother expresses a desire to remain anonymous, identifying information may be obtained for purposes of securing payment of labor and delivery costs only. If the birth mother is a minor, the hospital may use the identifying information to secure payment through Medicaid, but shall not notify the minor's parent or guardian without the minor's consent.

(b) The identity of the birth mother shall not be placed on the birth certificate or disclosed to the Department of Human Services.

(4) There is a presumption that by relinquishing a child in accordance with this section, the parent consents to the termination of his or her parental rights with respect to the child. As such, the parent waives the right to notification required by subsequent court proceedings.

(5) An emergency medical services provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child.

SOURCES: Laws, 2001, ch. 484, § 1; Laws, 2012, ch. 404, § 1, eff from and after July 1, 2012.

Cross References — Offenses pertaining to abandonment of children, see §§ 97-5-1 and 97-5-3.

§ 43-15-203. Notification to Department of Human Services that provider has taken possession of abandoned child; department to assume care, control, and custody of child upon receipt of notification.

(1) No later than the close of the first business day after the date on which an emergency medical services provider takes possession of a child pursuant to Section 43-15-201, the provider shall notify the Department of Human Services that the provider has taken possession of the child.

(2) The department shall assume the care, control and custody of the child immediately on receipt of notice pursuant to subsection (1). The department shall be responsible for all medical and other costs associated with the child and shall reimburse the hospital for any costs incurred prior to the child being placed in the care of the department.

SOURCES: Laws, 2001, ch. 484, § 2, eff from and after July 1, 2001.

§ 43-15-205. Affirmative defense to crime of child abandonment.

It shall be an absolute affirmative defense to prosecution under Sections 97-5-1, 97-5-3 and 97-5-39 if the parent voluntarily delivers the child unharmed to an emergency medical services provider pursuant to Section 43-15-201.

SOURCES: Laws, 2001, ch. 484, § 3; Laws, 2002, ch. 597, § 1, eff from and after passage (approved Apr. 11, 2002.)

Cross References — Offenses pertaining to abandonment of children, see §§ 97-5-1 and 97-5-3.

§ 43-15-207. Definition of "emergency medical services provider".

For the purposes of this article, an emergency medical services provider shall mean a licensed hospital, as defined in Section 41-9-3, which operates an emergency department or an adoption agency duly licensed by the Department of Human Services. An emergency medical services provider does not include the offices, clinics, surgeries or treatment facilities of private physicians or dentists. No individual licensed healthcare provider, including physicians, dentists, nurses, physician assistants or other health professionals shall be deemed to be an emergency medical services provider under this article unless such individual voluntarily assumes responsibility for the custody of the child.

SOURCES: Laws, 2001, ch. 484, § 4, eff from and after July 1, 2001.

§ 43-15-209. Immunity from liability.

A person or entity taking possession of a child under the provisions of this article shall be immune from liability for any civil action arising out of any act or omission resulting from taking possession of the child unless the act or omission was the result of the person's or entity's gross negligence or willful misconduct.

SOURCES: Laws, 2001, ch. 484, § 5, eff from and after July 1, 2001.

ARTICLE 7.

RESTRICTIONS ON EMPLOYMENT BY OR OPERATION OF CHILD CARE FACILITIES BY REGISTERED SEX OFFENDERS.

SEC.
43-15-301. Definitions.
43-15-303. Operators of child care service prohibited from employing registered sex offenders; penalties for violations.
43-15-305. Registered sex offenders prohibited from owning or operating child care services; penalties for violations.

43-15-307. Registered sex offenders prohibited from working for or volunteering at child care services; penalties for violations.

§ 43-15-301. Definitions.

As used in this article, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a)(i) "Child care service" means any school, business or volunteer service that is:

1. Licensed by the state to perform child care; or

2. Involves the care, instruction or guidance of minor children where a fee is charged for the care, instruction, guidance or participation of a child in the program or activity offered by the school, business or service; or

(ii) Any public school.

(b) "Child care service employer" means every person, firm, association, partnership, or corporation offering or conducting a child care service.

(c) "Applicant" means any person who is being considered for employment or as a volunteer by a child care service employer.

(d) "Convicted" means an adjudication of guilt or a plea of nolo contendere.

(e) "Sex offense" shall have the meaning ascribed in Section 45-33-23.

SOURCES: Laws, 2005, ch. 450, § 1, eff from and after July 1, 2005.

Cross References — Criminal background checks for owners and employees of child residential facilities, see § 43-15-6.

Mississippi Sex Offender Registration Law, see §§ 45-33-21 et seq.

§ 43-15-303. Operators of child care service prohibited from employing registered sex offenders; penalties for violations.

(1) A child care service employer offering or conducting a child care service:

(a) Shall not employ or permit to volunteer an applicant who is listed on the sex offender registry as a sex offender under Section 45-33-25; and

(b) Shall not knowingly employ or permit to volunteer an applicant who has been convicted of a sex offense, who has been adjudicated not guilty of a sex offense by reason of insanity; or who has been adjudicated physically or mentally incompetent.

(2)(a) A child care service employer who violates this section is guilty of a misdemeanor, and upon conviction shall be fined not more than Twenty-five Thousand Dollars ($25,000.00), imprisoned for a period not to exceed six (6) months, or both.

(b) An employer who obtains an official report from the Mississippi Justice Information Center that the applicant is not registered as a sex offender shall not be guilty of a violation of this section, absent the employer's actual knowledge that the applicant is a sex offender.

SOURCES: Laws, 2005, ch. 450, § 2, eff from and after July 1, 2005.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 43-15-305. Registered sex offenders prohibited from owning or operating child care services; penalties for violations.

A person required to register as a sex offender under Section 45-33-25 may not own or operate a child care service. Any person who is required to register as a sex offender under Section 45-33-25 who knowingly owns or operates a child care service is guilty of a felony, and upon conviction shall be imprisoned in the custody of the Department of Corrections for a period not to exceed five (5) years.

SOURCES: Laws, 2005, ch. 450, § 3, eff from and after Jan. 1, 2006.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 43-15-307. Registered sex offenders prohibited from working for or volunteering at child care services; penalties for violations.

(1) A person required to register as a sex offender under Section 45-33-25 may not be employed by or volunteer at a child care service. Any person who is required to register as a sex offender under Section 45-33-25 who knowingly undertakes employment or volunteer service with a child care service is guilty of a felony, and upon conviction shall be imprisoned in the custody of the Department of Corrections for a period not to exceed five (5) years.

(2) Any person who knowingly fails to inform a child care service employer of a prior conviction of a sex offense when applying or volunteering for any child care service, or who applies for employment or as a volunteer for any child care service, knowing that the person is required to register as a sex offender under Section 45-33-25, shall be guilty of a felony, and upon conviction shall be imprisoned in the custody of the Department of Corrections for a period not to exceed five (5) years.

SOURCES: Laws, 2005, ch. 450, § 4, eff from and after July 1, 2005.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

CHAPTER 16

Child Residential Home Notification Act

Sec.
43-16-1. Title.
43-16-3. Definitions.
43-16-5. State Department of Health to discharge provisions of chapter; notification agency.
43-16-7. Operators of home to give notice of operation; existing homes to be licensed or give notice.
43-16-9. Person required to file notification; contents of notification.
43-16-11. Acknowledgement of notification; fire and health inspections of home; chancery or youth court to receive copy of notification.
43-16-13. Monthly reports.
43-16-15. Annual inspections of homes; inspectors.
43-16-17. Written discipline and family communication policies required.
43-16-19. Enforcement of notification requirements.
43-16-21. Court action for injunction or restraining order against home; grounds.
43-16-23. Regulation of content of program of religious affiliated home prohibited.
43-16-25. Licensure fees for child residential homes.

§ 43-16-1. Title.

This chapter may be cited as the "Child Residential Home Notification Act."

SOURCES: Laws, 1989, ch. 493, § 1, eff from and after July 1, 1989.

Cross References — Application for license to operate a child residential home, see § 43-15-5.

Licensing of family foster homes, child-caring agencies and child-placing agencies, see § 43-15-101 et seq.

JUDICIAL DECISIONS

1. In general.

The Child Residential Home Notification Act (§ 43-16-1 et seq.) did not interfere with the constitutional religious freedom rights of a church congregation which operated a children's home. Fountain v. State ex rel. State Dep't of Health, 608 So. 2d 705 (Miss. 1992).

RESEARCH REFERENCES

Am Jur. 41 Am. Jur. Trials 1, Social Worker Malpractice for Failure to Protect Foster Children.

§ 43-16-3. Definitions.

As used in this chapter, the following definitions shall apply unless the context clearly provides otherwise:

(a) "Child" means a person who has not reached the age of eighteen (18) years or who has not otherwise been legally emancipated.

(b) "Child residential home" means any place, facility or home operated by any person which receives children who are not related to the operators and whose parents or guardians are not residents of the same facility for supervision, care, lodging and maintenance for twenty-four (24) hours a day, with or without transfer of custody. This term shall not include residential homes which are licensed by the State Department of Public Welfare under the provisions of Section 43-15-5, Mississippi Code of 1972, and shall not include any public school or any such home operated by a state agency, nor shall it include child care facilities as defined in Section 43-20-5, Mississippi Code of 1972, youth camps as defined in Section 75-74-3, Mississippi Code of 1972, or health care facilities licensed by the State Department of Health.

(c) "Department" shall mean the State Department of Health.

(d) "Person" shall include an individual, partnership, organization, association or corporation.

SOURCES: Laws, 1989, ch. 493, § 2, eff from and after July 1, 1989.

Editor's Note — Section 43-1-1 provides that the term "State Department of Public Welfare" shall mean the Department of Human Services.

Cross References — Application for license to operate a child residential home, see § 43-15-5.

Exemption of child residential homes from requirements of child care facilities, see § 43-20-5.

JUDICIAL DECISIONS

1. In general.

The Child Residential Home Notification Act (§ 43-16-1 et seq.) applied to a children's home operated by a church congregation, even though the Act does not specifically provide that it applies to homes which are affiliated with churches, since the Act's provision that it applies to any "organization" or "association" which operates a children's home is generic phraseology which encompasses a children's home operated by a church. Fountain v. State ex rel. State Dep't of Health, 608 So. 2d 705 (Miss. 1992).

§ 43-16-5. State Department of Health to discharge provisions of chapter; notification agency.

The State Department of Health shall be the notification agency for all child residential homes, and the department shall discharge as additional duties and responsibilities the provisions of this chapter.

SOURCES: Laws, 1989, ch. 493, § 3, eff from and after July 1, 1989.

§ 43-16-7. Operators of home to give notice of operation; existing homes to be licensed or give notice.

(1) The operator of any child residential home shall provide notification in accordance with this chapter within sixty (60) days of beginning operation.

(2) All child residential homes operating on July 1, 1989, shall either apply for a license from the Department of Public Welfare pursuant to Section

43-15-5, Mississippi Code of 1972, or file notification in accordance with this chapter, prior to August 1, 1989.

SOURCES: Laws, 1989, ch. 493, § 4, eff from and after July 1, 1989.

Editor's Note — Section 43-1-1 provides that the term "State Department of Public Welfare" shall mean the Department of Human Services.

§ 43-16-9. Person required to file notification; contents of notification.

Such notification shall be filed by the executive director of the child residential home to the department upon forms provided by the department and shall contain the following information:

(a) Name, street address, mailing address and phone number of the home.

(b) Name of the executive director and all staff members of the home.

(c) Name and description of the agency or organization operating the home, which shall include a statement as to whether or not the agency or organization is incorporated.

(d) Name and address of the sponsoring organization of the home, if applicable.

(e) The names of all children living at the home which shall include the following personal data:

(i) Full name and a copy of the child's birth certificate;

(ii) Name and address of parent(s) or guardian(s); and

(iii) Name and address of other nearest relative.

(f) School(s) attended by the children served by such home.

(g) Fire department or State Fire Marshal inspection certificate.

(h) Local health department inspection certificate.

(i) Proof, to be shown by the sworn affidavit of the executive director of the home, that the home has performed (i) criminal record background checks, and (ii) felony conviction record information checks on all employees, prospective employees, volunteers and prospective volunteers at such home, and that such records are maintained to the extent permitted by law, for every such employee, prospective employee, volunteer and prospective volunteer.

(j) Proof, to be shown by the sworn affidavit of the executive director of the home, that medical records are maintained for each child.

SOURCES: Laws, 1989, ch. 493, § 5; Laws, 1999, ch. 328, § 1; Laws, 2000, ch. 499, § 25, eff from and after July 1, 2000.

Cross References — Application for license to operate a child residential home, see § 43-15-5.

Certificates of fire and health inspections to accompany notification; copy of notification to chancery or youth court, see § 43-16-11.

Monthly reports to indicate changes in notification information, see § 43-16-13.

Failure to file notification as ground to seek injunction against home, see § 43-16-21.

§ 43-16-11. Acknowledgement of notification; fire and health inspections of home; chancery or youth court to receive copy of notification.

(1) Acknowledgement of notification shall be issued by the department upon the filing of a properly completed notification form accompanied by (a) a certificate of inspection and approval by the fire department of the municipality or other political subdivision in which the home is located, and (b) a certificate of inspection and approval by the health department of the county in which the home is located.

(2) If no fire department exists where the home is located, the State Fire Marshal shall certify as to the inspection for safety from fire hazards. The State Fire Marshal shall establish standards for safety from fire hazards at child residential homes.

(3) Upon notification by a child residential home, the department shall provide copies of the notification form to the chancery court or the youth court, as appropriate, of the county in which the home is located.

SOURCES: Laws, 1989, ch. 493, § 6, eff from and after July 1, 1989.

§ 43-16-13. Monthly reports.

Each child residential home shall file monthly reports with the department, on forms provided by the department. Said monthly report shall indicate any changes in the notification information originally provided in accordance with Section 43-16-9 which have occurred, if any. The department shall provide copies of this monthly report to the youth court of the county in which the home is located.

SOURCES: Laws, 1989, ch. 493, § 7, eff from and after July 1, 1989.

§ 43-16-15. Annual inspections of homes; inspectors.

The department once a year shall make or cause to be made inspections limited to health, nutrition, cleanliness, sanitation, written medical records for children, discipline policy, family communication policy and required criminal checks of all child residential homes. Reasonable additional inspections may be made as often as may be deemed necessary by the department, but shall not be scheduled so as to disrupt the normal activities of the home. Department inspectors shall be persons knowledgeable with the state's child abuse and neglect laws, child labor laws and compulsory education laws. The State Fire Marshal, or his designee, shall make or cause to be made annual inspections limited to the safety of all child residential homes. Any violation of state law on the premises of such child residential home shall immediately be reported by such inspection personnel to the appropriate law enforcement officer.

SOURCES: Laws, 1989, ch. 493, § 8; Laws, 1999, ch. 328, § 2, eff from and after July 1, 1999.

Cross References — Failure to comply with fire and health inspection requirements as ground to seek injunction against home, see § 43-16-21.

§ 43-16-17. Written discipline and family communication policies required.

Every child residential home shall have a written discipline policy and written family communication policy which shall be approved in writing, if possible, by the parent(s) or guardian(s) of the children residing at such home, and shall be made available to authorized inspection personnel upon request.

SOURCES: Laws, 1989, ch. 493, § 9, eff from and after July 1, 1989.

RESEARCH REFERENCES

Am Jur. 41 Am. Jur. Trials 1, Social Worker Malpractice for Failure to Protect Foster Children.

§ 43-16-19. Enforcement of notification requirements.

Whenever the department is advised or has reason to believe that any child residential home is operating without proper notification in accordance with this chapter, it shall request a meeting with the governing board and executive director of such home to ascertain the fact. If the department finds that such home is providing supervision, care, lodging or maintenance for any children without such notification, it shall give the executive director of the home written notice by certified mail that such person shall file notification in accordance with this chapter within sixty (60) days after receipt of such notice or the department may request a court injunction as provided in Section 43-16-21.

SOURCES: Laws, 1989, ch. 493, § 10, eff from and after July 1, 1989.

Cross References — Application for license to operate a child residential home, see § 43-15-5.

§ 43-16-21. Court action for injunction or restraining order against home; grounds.

Notwithstanding the existence of any other remedy, the department may, in the manner provided by law, in termtime or in vacation, upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or restraining order to cease the operation of the home, and to provide for the appropriate removal of the children from the home and placement in the custody of the parents or legal guardians, the Department of Human Services, or any other appropriate entity in the discretion of the court. Such action shall be brought in the chancery court or the youth court, as appropriate, of the county in which such child residential home is located, and shall only be initiated for the following violations:

(a) Providing supervision, care, lodging or maintenance for any children in such home without filing notification in accordance with this chapter.

(b) Failure to satisfactorily comply with local health department or State Fire Marshal inspections made pursuant to Section 43-16-15, regarding the health, nutrition, cleanliness, safety, sanitation, written records and discipline policy of such home.

(c) Suspected abuse and/or neglect of the children served by such home, as defined in Section 43-21-105.

SOURCES: Laws, 1989, ch. 493, § 11; Laws, 1999, ch. 328, § 3; Laws, 2012, ch. 546, § 18, eff from and after July 1, 2012.

Cross References — Use of court injunction to enforce compliance with notification requirements, see § 43-16-19.

§ 43-16-23. Regulation of content of program of religious affiliated home prohibited.

Nothing in this chapter shall give any governmental agency jurisdiction or authority to regulate or attempt to regulate, control or influence the form, manner or content of the religious curriculum, program or ministry of a school or of a facility sponsored by a church or religious organization.

SOURCES: Laws, 1989, ch. 493, § 12, eff from and after July 1, 1989.

§ 43-16-25. Licensure fees for child residential homes.

A license issued under the provisions of this chapter shall be renewed annually upon payment of a renewal fee not to exceed One Hundred Dollars ($100.00) and upon filing by the licensee of an annual report upon such uniform dates and upon forms provided by the licensing agency, accompanied by a current certificate of inspection and approval by the fire department and the county health department specified in Section 43-16-11.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

SOURCES: Laws, 2000, ch. 365, § 1, eff from and after July 1, 2000.

Cross References — Licensing of family foster homes, child-caring agencies and child-placing agencies, see § 43-15-101 et seq.

CHAPTER 17

Temporary Assistance to Needy Families

Sec.
43-17-1. Temporary Assistance to Needy Families Program.
43-17-3. Definitions.
43-17-5. Amount of assistance [Repealed effective July 1, 2019].
43-17-6. Written screening questionnaire for certain adult applicants for TANF benefits; purpose; drug test; substance use disorder treatment plan; termination of cash assistance.
43-17-7. Duties of State Department of Human Services.
43-17-9. Duties of county departments.
43-17-11. Application for assistance.
43-17-13. Investigation of applications.
43-17-15. Granting of assistance.
43-17-17. Appeal to the State Department of Human Services.
43-17-19. Periodic reconsideration and changes in amount of assistance.
43-17-21. Removal to another county.
43-17-23. Receipt and disposition of federal and other funds and manner of disbursing same.
43-17-25. Fraudulent acts; penalties.
43-17-27 and 43-17-29. Repealed.
43-17-31. Repealed.
43-17-33. Entrepreneurial development; funding.
43-17-35. Establishment of task force on out-of-wedlock pregnancies.
43-17-37. Repealed.
43-17-39. Repealed.

§ 43-17-1. Temporary Assistance to Needy Families Program.

(1) The State of Mississippi hereby accepts all of the mandatory provisions and benefits, with the exception of those provisions under which the state may exercise its options, of Title I of an act passed by the Senate and House of Representatives of the United States of America, in Congress assembled, entitled: "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193)," and known as the Temporary Assistance to Needy Families (TANF) program.

(2) The Department of Human Services shall have all necessary authority to cooperate with the federal government in the administration of Public Law 104-193 and all subsequent federal amendments thereto, to administer any legislation pursuant thereto enacted by the State of Mississippi, and to administer the funds provided by the federal government and the State of Mississippi under the provisions of Section 43-17-1 et seq., for providing temporary assistance for needy families with minor children. The Department of Human Services shall have full authority to formulate state plans consistent with state law as necessary to administer and operate federal grant funds which provide temporary assistance for needy families with minor children under Title IV-A of the federal Social Security Act. The Department of Human Services shall identify in any state plan submitted to implement the TANF program those requirements or restrictions, including persons excluded from

program participation which are required under federal law, and those program requirements or restrictions which the federal law authorizes but does not require.

(3) Any funds received by the State of Mississippi under the provisions of Public Law 104-193 shall be subject to appropriation by the Legislature and consistent with the terms and conditions required under such appropriation.

(4) The purpose of the Mississippi Temporary Assistance to Needy Families (TANF) program shall be to:

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives when such care is beneficial and may be monitored on a random basis by the Department of Human Services or the State Department of Health;

(b) End the dependence of needy families on government benefits by promoting job preparation, work and marriage through, among other things, job placement, job training and job retention;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies;

(d) Encourage the formation and maintenance of two-parent families; and

(e) Prevent program fraud and abuse.

(5) The Department of Human Services shall develop outcome and output indicators for each program established under the authority of this section. These measures shall provide legislators and administrators with information which measures the success or failure of the department in implementing the programs implemented under the authority of this section. The department shall annually report to the Legislature the outputs and outcomes of these programs, with the first report due by December 15, 1997. Such reports shall include recommendations for making programs more effective or efficient which can be effected in accordance with federal law.

(6) Assistance may be granted under this chapter to any dependent child and a caretaker relative who are living in a suitable family home meeting the standards of care and health and work requirements fixed by the laws of this state, and the rules and regulations of the State Department of Human Services.

SOURCES: Codes, 1942, § 7171; Laws, 1940, ch. 294; Laws, 1958, ch. 534, § 1; Laws, 1985, ch. 381, § 1; Laws, 1993, ch. 614, § 10; Laws, 1994, ch. 582, § 5; Laws, 1997, ch. 316, § 1, eff from and after passage (approved March 12, 1997).

Cross References — Administration of child welfare, generally, see §§ 43-15-1 et seq.

Effect of Department of Youth Services Law (Ch. 27 of Title 43) on this chapter, see § 43-27-33.

Comparable Laws from other States — Arkansas Code Annotated, §§ 20-76-101 et seq.

Georgia Code Annotated, §§ 49-4-180 through 49-4-192.

Louisiana Revised Statutes Annotated, §§ 46:460.4, 46:460.5.

Tennessee Code Annotated, §§ 71-3-151 through 71-3-165.

Federal Aspects — Temporary Assistance for Needy Families (formerly known as Aid to Families with Dependent Children), see 42 USCS §§ 601 et seq.

Title IV-A of the federal Social Security Act, see 42 USCS §§ 601 et seq.

JUDICIAL DECISIONS

1. In general.

This chapter 1, Title 26, of the 1942 Code, relating to child welfare, and the administrative regulations issued thereunder with respect to the amount of aid granted families with dependent children, were not shown to have violated any federal social security or welfare acts. Ward v. Winstead, 314 F. Supp. 1225 (N.D. Miss. 1970), appeal dismissed, 400 U.S. 1019, 91 S. Ct. 587, 27 L. Ed. 2d 630 (1971).

RESEARCH REFERENCES

ALR. Eligibility of strikers to obtain public assistance. 57 A.L.R.3d 1303.

Who is "dependent child" within meaning of §§ 406(a), 407(a), and 408(a) of the Social Security Act (42 USCS §§ 606(a), 607(a), and 608(a)), entitling families to aid for dependent children (AFDC). 23 A.L.R. Fed. 232.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 1 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare § 206.

Lawyers' Edition. Constitutionality of state welfare programs, including those which are federally assisted. 25 L. Ed. 2d 907.

§ 43-17-3. Definitions.

As used in this chapter:

(a) "State Department" means the State Department of Human Services.

(b) "County department" means the county department of human services and the county director of human services of each of the several counties in this state.

(c) "Dependent child" means a needy child under the age of eighteen (18), who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or the unemployment of the parent who is the principal earner, and who is living with his caretaker relative, in a place of residence maintained by one or more of such relatives as his or their own home, or who is placed in foster care pursuant to an order of a court of competent jurisdiction.

(d) "Caretaker relative" means a person who is providing care to a child qualified for and receiving assistance and who is the child's father, mother, grandfather, grandmother, brother, sister, uncle, aunt or any blood relative, including those of half-blood, and including first cousins or first cousins once removed, nephews, or nieces, and persons of preceding generations as denoted by the prefix of grand, great, or great-great, including great-great-great-grandparents, stepfather, stepmother, stepbrother and stepsister, persons who legally adopt a child or his parent, as well as the natural and other legally adopted children of such persons, and spouses of any persons named in the above groups. For the purposes of this chapter, all such relatives shall qualify as such whether the relationship be acquired by birth or adoption, and neither divorce nor death shall terminate any such relationship.

(e) "Assistance" means payment, including vendor or "in kind" payment to a TANF recipient, with respect to a dependent child or children paid to caretaker relatives or to other approved persons, agencies, associations, corporations or institutions providing medical or foster care, maintenance, work or training programs as authorized by the federal Social Security Act, as amended, to strengthen family life through services to children, foster care for children, work programs and services aimed at restoring individuals to independence and self-support; administrative costs, physical examinations, day care or child care arrangements essential to work programs.

(f) "Child's budget" means that mathematical computation used by county human service departments by which the Mississippi Standard of Need is compared to the income and resources of a family unit to determine the amount, if any, of assistance to which each family unit may be entitled, with full consideration given to the number of members in a family unit.

SOURCES: Codes, 1942, § 7172; Laws, 1940, ch. 294; Laws, 1948, ch. 410, § 1; Laws, 1958, ch. 534, § 2; Laws, 1962, ch. 559, § 1; Laws, 1968, ch. 562, § 1; Laws, 1983, ch. 504, § 5; Laws, 1985, ch. 383, § 2; Laws, 1990, ch. 356, § 2; Laws, 1997, ch. 316, § 2, eff from and after passage (approved March 12, 1997).

Federal Aspects — Federal Social Security Act, see 42 USCS §§ 301 et seq.

§ 43-17-5. Amount of assistance [Repealed effective July 1, 2019].

(1) The amount of Temporary Assistance for Needy Families (TANF) benefits which may be granted for any dependent child and a needy caretaker relative shall be determined by the county department with due regard to the resources and necessary expenditures of the family and the conditions existing in each case, and in accordance with the rules and regulations made by the Department of Human Services which shall not be less than the Standard of Need in effect for 1988, and shall be sufficient when added to all other income (except that any income specified in the federal Social Security Act, as amended, may be disregarded) and support available to the child to provide such child with a reasonable subsistence compatible with decency and health. The first family member in the dependent child's budget may receive an amount not to exceed One Hundred Ten Dollars ($110.00) per month; the second family member in the dependent child's budget may receive an amount not to exceed Thirty-six Dollars ($36.00) per month; and each additional family member in the dependent child's budget an amount not to exceed Twenty-four Dollars ($24.00) per month. The maximum for any individual family member in the dependent child's budget may be exceeded for foster or medical care or

in cases of children with an intellectual disability or a physical disability. TANF benefits granted shall be specifically limited only (a) to children existing or conceived at the time the caretaker relative initially applies and qualifies for such assistance, unless this limitation is specifically waived by the department, or (b) to a child born following a twelve-consecutive-month period of discontinued benefits by the caretaker relative.

(2) TANF benefits in Mississippi shall be provided to the recipient family by an online electronic benefits transfer system.

(3) The Department of Human Services shall deny TANF benefits to the following categories of individuals, except for individuals and families specifically exempt or excluded for good cause as allowed by federal statute or regulation:

(a) Families without a minor child residing with the custodial parent or other adult caretaker relative of the child;

(b) Families which include an adult who has received TANF assistance for sixty (60) months after the commencement of the Mississippi TANF program, whether or not such period of time is consecutive;

(c) Families not assigning to the state any rights a family member may have, on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance, to support from any other person, as required by law;

(d) Families who fail to cooperate in establishing paternity or obtaining child support, as required by law;

(e) Any individual who has not attained eighteen (18) years of age, is not married to the head of household, has a minor child at least twelve (12) weeks of age in his or her care, and has not successfully completed a high school education or its equivalent, if such individual does not participate in educational activities directed toward the attainment of a high school diploma or its equivalent, or an alternative educational or training program approved by the department;

(f) Any individual who has not attained eighteen (18) years of age, is not married, has a minor child in his or her care, and does not reside in a place or residence maintained by a parent, legal guardian or other adult relative or the individual as such parent's, guardian's or adult relative's own home;

(g) Any minor child who has been, or is expected by a parent or other caretaker relative of the child to be, absent from the home for a period of more than thirty (30) days;

(h) Any individual who is a parent or other caretaker relative of a minor child who fails to notify the department of the absence of the minor child from the home for the thirty-day period specified in paragraph (g), by the end of the five-day period that begins with the date that it becomes clear to the individual that the minor child will be absent for the thirty-day period;

(i) Any individual who fails to comply with the provisions of the Employability Development Plan signed by the individual which prescribe those activities designed to help the individual become and remain employed, or to participate satisfactorily in the assigned work activity, as authorized under subsection (6)(c) and (d), or who does not engage in applicant job search activities within the thirty-day period for TANF application approval after receiving the advice and consultation of eligibility workers and/or caseworkers of the department providing a detailed description of available job search venues in the individual's county of residence or the surrounding counties;

(j) A parent or caretaker relative who has not engaged in an allowable work activity once the department determines the parent or caretaker relative is ready to engage in work, or once the parent or caretaker relative has received TANF assistance under the program for twenty-four (24) months, whether or not consecutive, whichever is earlier;

(k) Any individual who is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the jurisdiction from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or who is violating a condition of probation or parole imposed under federal or state law;

(*l*) Aliens who are not qualified under federal law;

(m) For a period of ten (10) years following conviction, individuals convicted in federal or state court of having made a fraudulent statement or representation with respect to the individual's place of residence in order to receive TANF, food stamps or Supplemental Security Income (SSI) assistance under Title XVI or Title XIX simultaneously from two (2) or more states;

(n) Individuals who are recipients of federal Supplemental Security Income (SSI) assistance; and

(o) Individuals who are eighteen (18) years of age or older who are not in compliance with the drug testing and substance use disorder treatment requirements of Section 43-17-6.

(4)(a) Any person who is otherwise eligible for TANF benefits, including custodial and noncustodial parents, shall be required to attend school and meet the monthly attendance requirement as provided in this subsection if all of the following apply:

(i) The person is under age twenty (20);

(ii) The person has not graduated from a public or private high school or obtained a High School Equivalency Diploma equivalent;

(iii) The person is physically able to attend school and is not excused from attending school; and

(iv) If the person is a parent or caretaker relative with whom a dependent child is living, child care is available for the child.

The monthly attendance requirement under this subsection shall be attendance at the school in which the person is enrolled for each day during a month that the school conducts classes in which the person is enrolled, with not more than two (2) absences during the month for reasons other than the reasons listed in paragraph (e)(iv) of this subsection. Persons who fail to meet participation requirements in this subsection shall be subject to sanctions as provided in paragraph (f) of this subsection.

(b) As used in this subsection, "school" means any one (1) of the following:

(i) A school as defined in Section 37-13-91(2);

(ii) A vocational, technical and adult education program; or

(iii) A course of study meeting the standards established by the State Department of Education for the granting of a declaration of equivalency of high school graduation.

(c) If any compulsory-school-age child, as defined in Section 37-13-91(2), to which TANF eligibility requirements apply is not in compliance with the compulsory school attendance requirements of Section 37-13-91(6), the superintendent of schools of the school district in which the child is enrolled or eligible to attend shall notify the county department of human services of the child's noncompliance. The Department of Human Services shall review school attendance information as provided under this paragraph at all initial eligibility determinations and upon subsequent report of unsatisfactory attendance.

(d) The signature of a person on an application for TANF benefits constitutes permission for the release of school attendance records for that person or for any child residing with that person. The department shall request information from the child's school district about the child's attendance in the school district's most recently completed semester of attendance. If information about the child's previous school attendance is not available or cannot be verified, the department shall require the child to meet the monthly attendance requirement for one (1) semester or until the information is obtained. The department shall use the attendance information provided by a school district to verify attendance for a child. The department shall review with the parent or caretaker relative a child's claim that he or she has a good cause for not attending school.

A school district shall provide information to the department about the attendance of a child who is enrolled in a public school in the district within five (5) working days of the receipt of a written request for that information from the department. The school district shall define how many hours of attendance count as a full day and shall provide that information, upon request, to the department. In reporting attendance, the school district may add partial days' absence together to constitute a full day's absence.

If a school district fails to provide to the department the information about the school attendance of any child within fifteen (15) working days after a written request, the department shall notify the Department of Audit within three (3) working days of the school district's failure to comply with that requirement. The Department of Audit shall begin audit proceedings within five (5) working days of notification by the Department of Human Services to determine the school district's compliance with the requirements of this subsection (4). If the Department of Audit finds that the school district is not in compliance with the requirements of this subsection, the school district shall be penalized as follows: The Department of Audit shall notify the State Department of Education of the school district's noncompliance, and the Department of Education shall reduce the calculation of the school district's average daily attendance (ADA) that is used to determine the allocation of Mississippi Adequate Education Program funds by the number of children for which the district has failed to provide to the Department of Human Services the required information about the school attendance of those children. The reduction in the calculation of the school district's ADA under this paragraph shall be effective for a period of one (1) year.

(e) A child who is required to attend school to meet the requirements under this subsection shall comply except when there is good cause, which shall be demonstrated by any of the following circumstances:

(i) The minor parent is the caretaker of a child less than twelve (12) weeks old; or

(ii) The department determines that child care services are necessary for the minor parent to attend school and there is no child care available; or

(iii) The child is prohibited by the school district from attending school and an expulsion is pending. This exemption no longer applies once the teenager has been expelled; however, a teenager who has been expelled and is making satisfactory progress towards obtaining a High School Equivalency Diploma equivalent shall be eligible for TANF benefits; or

(iv) The child failed to attend school for one or more of the following reasons:

1. Illness, injury or incapacity of the child or the minor parent's child;
2. Court-required appearances or temporary incarceration;
3. Medical or dental appointments for the child or minor parent's child;
4. Death of a close relative;
5. Observance of a religious holiday;
6. Family emergency;
7. Breakdown in transportation;
8. Suspension; or
9. Any other circumstance beyond the control of the child, as defined in regulations of the department.

(f) Upon determination that a child has failed without good cause to attend school as required, the department shall provide written notice to the parent or caretaker relative (whoever is the primary recipient of the TANF benefits) that specifies:

(i) That the family will be sanctioned in the next possible payment month because the child who is required to attend school has failed to meet the attendance requirement of this subsection;

(ii) The beginning date of the sanction, and the child to whom the sanction applies;

(iii) The right of the child's parents or caretaker relative (whoever is the primary recipient of the TANF benefits) to request a fair hearing under this subsection.

The child's parent or caretaker relative (whoever is the primary recipient of the TANF benefits) may request a fair hearing on the department's determination that the child has not been attending school. If the child's parents or caretaker relative does not request a fair hearing under this subsection, or if, after a fair hearing has been held, the hearing officer finds that the child without good cause has failed to meet the monthly attendance requirement, the department shall discontinue or deny TANF benefits to the child thirteen (13) years old, or older, in the next possible payment month. The department shall discontinue or deny twenty-five percent (25%) of the family grant when a child six (6) through twelve (12) years of age without good cause has failed to meet the monthly attendance requirement. Both the child and family sanction may apply when children in both age groups fail to meet the attendance requirement without good cause. A sanction applied under this subsection shall be effective for one (1) month for each month that the child failed to meet the monthly attendance requirement. In the case of a dropout, the sanction shall remain in force until the parent or caretaker relative provides written proof from the school district that the child has reenrolled and met the monthly attendance requirement for one (1) calendar month. Any month in which school is in session for at least ten (10) days during the month may be used to meet the attendance requirement under this subsection. This includes attendance at summer school. The sanction shall be removed the next possible payment month.

(5) All parents or caretaker relatives shall have their dependent children receive vaccinations and booster vaccinations against those diseases specified by the State Health Officer under Section 41-23-37 in accordance with the vaccination and booster vaccination schedule prescribed by the State Health Officer for children of that age, in order for the parents or caretaker relatives to be eligible or remain eligible to receive TANF benefits. Proof of having received such vaccinations and booster vaccinations shall be given by presenting the certificates of vaccination issued by any health care provider licensed to administer vaccinations, and submitted on forms specified by the State Board of Health. If the parents without good cause do not have their dependent children receive the vaccinations and booster vaccinations as required by this subsection and they fail to comply after thirty (30) days' notice, the department shall sanction the family's TANF benefits by twenty-five percent (25%) for the next payment month and each subsequent payment month until the requirements of this subsection are met.

(6)(a) If the parent or caretaker relative applying for TANF assistance is work eligible, as determined by the Department of Human Services, the person shall be required to engage in an allowable work activity once the department determines the parent or caretaker relative is determined work eligible, or once the parent or caretaker relative has received TANF assistance under the program for twenty-four (24) months, whether or not consecutive, whichever is earlier. No TANF benefits shall be given to any person to whom this section applies who fails without good cause to comply with the Employability Development Plan prepared by the department for the person, or who has refused to accept a referral or offer of employment, training or education in which he or she is able to engage, subject to the penalties prescribed in paragraph (e) of this subsection. A person shall be deemed to have refused to accept a referral or offer of employment, training or education if he or she:

(i) Willfully fails to report for an interview with respect to employment when requested to do so by the department; or

(ii) Willfully fails to report to the department the result of a referral to employment; or

(iii) Willfully fails to report for allowable work activities as prescribed in paragraphs (c) and (d) of this subsection.

(b) The Department of Human Services shall operate a statewide work program for TANF recipients to provide work activities and supportive services to enable families to become self-sufficient and improve their competitive position in the workforce in accordance with the requirements of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), as amended, and the regulations promulgated thereunder, and the Deficit Reduction Act of 2005 (Public Law 109-171), as amended. Within sixty (60) days after the initial application for TANF benefits, the TANF recipient must participate in a job search skills training workshop or a job readiness program, which shall include resume writing, job search skills, employability skills and, if available at no charge, the General Aptitude Test Battery or its equivalent. All adults who are not specifically exempt shall be referred by the department for allowable work activities. An adult may be exempt from the mandatory work activity requirement for the following reasons:

(i) Incapacity;

(ii) Temporary illness or injury, verified by physician's certificate;

(iii) Is in the third trimester of pregnancy, and there are complications verified by the certificate of a physician, nurse practitioner, physician assistant, or any other licensed health care professional practicing under a protocol with a licensed physician;

(iv) Caretaker of a child under twelve (12) months, for not more than twelve (12) months of the sixty-month maximum benefit period;

(v) Caretaker of an ill or incapacitated person, as verified by physician's certificate;

(vi) Age, if over sixty (60) or under eighteen (18) years of age;

(vii) Receiving treatment for substance abuse, if the person is in compliance with the substance abuse treatment plan;

(viii) In a two-parent family, the caretaker of a severely disabled child, as verified by a physician's certificate; or

(ix) History of having been a victim of domestic violence, which has been reported as required by state law and is substantiated by police reports or court records, and being at risk of further domestic violence, shall be exempt for a period as deemed necessary by the department but not to exceed a total of twelve (12) months, which need not be consecutive, in the sixty-month maximum benefit period. For the purposes of this subparagraph (ix), "domestic violence" means that an individual has been subjected to:

1. Physical acts that resulted in, or threatened to result in, physical injury to the individual;
2. Sexual abuse;
3. Sexual activity involving a dependent child;
4. Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;
5. Threats of, or attempts at, physical or sexual abuse;
6. Mental abuse; or
7. Neglect or deprivation of medical care.

(c) For all families, all adults who are not specifically exempt shall be required to participate in work activities for at least the minimum average number of hours per week specified by federal law or regulation, not fewer than twenty (20) hours per week (thirty-five (35) hours per week for two-parent families) of which are attributable to the following allowable work activities:

(i) Unsubsidized employment;

(ii) Subsidized private employment;

(iii) Subsidized public employment;

(iv) Work experience (including work associated with the refurbishing of publicly assisted housing), if sufficient private employment is not available;

(v) On-the-job training;

(vi) Job search and job readiness assistance consistent with federal TANF regulations;

(vii) Community service programs;

(viii) Vocational educational training (not to exceed twelve (12) months with respect to any individual);

(ix) The provision of child care services to an individual who is participating in a community service program;

(x) Satisfactory attendance at high school or in a course of study leading to a high school equivalency certificate, for heads of household under age twenty (20) who have not completed high school or received such certificate;

(xi) Education directly related to employment, for heads of household under age twenty (20) who have not completed high school or received such equivalency certificate.

(d) The following are allowable work activities which may be attributable to hours in excess of the minimum specified in subsection (6)(c):

(i) Job skills training directly related to employment;

(ii) Education directly related to employment for individuals who have not completed high school or received a high school equivalency certificate;

(iii) Satisfactory attendance at high school or in a course of study leading to a high school equivalency, for individuals who have not completed high school or received such equivalency certificate;

(iv) Job search and job readiness assistance consistent with federal TANF regulations.

(e) If any adult or caretaker relative refuses to participate in allowable work activity as required under this subsection (6), the following full family TANF benefit penalty will apply, subject to due process to include notification, conciliation and a hearing if requested by the recipient:

(i) For the first violation, the department shall terminate the TANF assistance otherwise payable to the family for a two-month period or until the person has complied with the required work activity, whichever is longer;

(ii) For the second violation, the department shall terminate the TANF assistance otherwise payable to the family for a six-month period or until the person has complied with the required work activity, whichever is longer;

(iii) For the third violation, the department shall terminate the TANF assistance otherwise payable to the family for a twelve-month period or until the person has complied with the required work activity, whichever is longer;

(iv) For the fourth violation, the person shall be permanently disqualified.

For a two-parent family, unless prohibited by state or federal law, Medicaid assistance shall be terminated only for the person whose failure to participate in allowable work activity caused the family's TANF assistance to be sanctioned under this subsection (6)(e), unless an individual is pregnant, but shall not be terminated for any other person in the family who is meeting that person's applicable work requirement or who is not required to work. Minor children shall continue to be eligible for Medicaid benefits regardless of the disqualification of their parent or caretaker relative for TANF assistance under this subsection (6), unless prohibited by state or federal law.

(f) Any person enrolled in a two-year or four-year college program who meets the eligibility requirements to receive TANF benefits, and who is meeting the applicable work requirements and all other applicable requirements of the TANF program, shall continue to be eligible for TANF benefits while enrolled in the college program for as long as the person meets the requirements of the TANF program, unless prohibited by federal law.

(g) No adult in a work activity required under this subsection (6) shall be employed or assigned (i) when any other individual is on layoff from the same or any substantially equivalent job within six (6) months before the date of the TANF recipient's employment or assignment; or (ii) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult receiving TANF assistance. The Mississippi

Department of Employment Security, established under Section 71-5-101, shall appoint one or more impartial hearing officers to hear and decide claims by employees of violations of this paragraph (g). The hearing officer shall hear all the evidence with respect to any claim made hereunder and such additional evidence as he may require and shall make a determination and the reason therefor. The claimant shall be promptly notified of the decision of the hearing officer and the reason therefor. Within ten (10) days after the decision of the hearing officer has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action, in the circuit court of the county in which the claimant resides, against the department for the review of such decision, in which action any other party to the proceeding before the hearing officer shall be made a defendant. Any such appeal shall be on the record which shall be certified to the court by the department in the manner provided in Section 71-5-531, and the jurisdiction of the court shall be confined to questions of law which shall render its decision as provided in that section.

(7) The Department of Human Services may provide child care for eligible participants who require such care so that they may accept employment or remain employed. The department may also provide child care for those participating in the TANF program when it is determined that they are satisfactorily involved in education, training or other allowable work activities. The department may contract with Head Start agencies to provide child care services to TANF recipients. The department may also arrange for child care by use of contract or vouchers, provide vouchers in advance to a caretaker relative, reimburse a child care provider, or use any other arrangement deemed appropriate by the department, and may establish different reimbursement rates for child care services depending on the category of the facility or home. Any center-based or group home child care facility under this subsection shall be licensed by the State Department of Health pursuant to law. When child care is being provided in the child's own home, in the home of a relative of the child, or in any other unlicensed setting, the provision of such child care may be monitored on a random basis by the Department of Human Services or the State Department of Health. Transitional child care assistance may be continued if it is necessary for parents to maintain employment once support has ended, unless prohibited under state or federal law. Transitional child care assistance may be provided for up to twenty-four (24) months after the last month during which the family was eligible for TANF assistance, if federal funds are available for such child care assistance.

(8) The Department of Human Services may provide transportation or provide reasonable reimbursement for transportation expenses that are necessary for individuals to be able to participate in allowable work activity under the TANF program.

(9) Medicaid assistance shall be provided to a family of TANF program participants for up to twenty-four (24) consecutive calendar months following the month in which the participating family would be ineligible for TANF benefits because of increased income, expiration of earned income disregards,

or increased hours of employment of the caretaker relative; however, Medicaid assistance for more than twelve (12) months may be provided only if a federal waiver is obtained to provide such assistance for more than twelve (12) months and federal and state funds are available to provide such assistance.

(10) The department shall require applicants for and recipients of public assistance from the department to sign a personal responsibility contract that will require the applicant or recipient to acknowledge his or her responsibilities to the state.

(11) The department shall enter into an agreement with the State Personnel Board and other state agencies that will allow those TANF participants who qualify for vacant jobs within state agencies to be placed in state jobs. State agencies participating in the TANF work program shall receive any and all benefits received by employers in the private sector for hiring TANF recipients. This subsection (11) shall be effective only if the state obtains any necessary federal waiver or approval and if federal funds are available therefor.

(12) Any unspent TANF funds remaining from the prior fiscal year may be expended for any TANF allowable activities.

(13) The Mississippi Department of Human Services shall provide TANF applicants information and referral to programs that provide information about birth control, prenatal health care, abstinence education, marriage education, family preservation and fatherhood.

(14) No new TANF program requirement or restriction affecting a person's eligibility for TANF assistance, or allowable work activity, which is not mandated by federal law or regulation may be implemented by the Department of Human Services after July 1, 2004, unless such is specifically authorized by an amendment to this section by the Legislature.

SOURCES: Codes, 1942, § 7173; Laws, 1940, ch. 294; Laws, 1944, ch. 292, § 1; Laws, 1957, Ex Sess, ch. 22; Laws, 1962, ch. 559, § 2; Laws, 1968, ch. 562, § 3; Laws, 1978, ch. 303, § 1; Laws, 1985, ch. 383, § 3; Laws, 1993, ch. 614, § 11; Laws, 1994, ch. 582, § 6; Laws, 1997, ch. 316, § 3; Laws, 1999, ch. 390, § 1; Laws, 2004, ch. 572, § 49; Laws, 2006, ch. 547, § 1; Laws, 2008, ch. 533, § 1; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 49; Laws, 2010, ch. 476, § 72; Laws, 2010, ch. 559, §49; Laws, 2011, ch. 471, § 50; Laws, 2012, ch. 515, § 50; Laws, 2014, ch. 398, § 10; Laws, 2014, ch. 430, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (3)(i). The word "an" was deleted preceding "applicant" so that "Any individual who ... does not engage in an applicant job search activities..." reads as "Any individual who ... does not engage in applicant job search activities ..." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Section 72 of ch. 476, Laws of 2010, effective from and after passage (approved April 1, 2010), amended this section. Section 49 of ch. 559, Laws of 2010, effective from and after July 1, 2010, reenacted this section. As set out above, this section reflects the language of both acts pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal statutory references by substituting "paragraph (e) of this subsection" for "subsection (6)(e)" in the next-to-last sentence of (6)(a), and "paragraphs (c) and (d) of this subsection" for "subsection (6)(c) and (d)" at the end of (6)(a)(iii). The Joint Committee ratified the corrections at its July 24, 2014, meeting.

Section 10 of Chapter 398, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014), amended this section. Section 2 of Chapter 430, Laws of 2014, effective from and after July 1, 2014 (approved March 24, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

Amendment Notes — The first 2014 amendment (ch. 398) substituted "High School Equivalency Diploma" for "GED" in (4)(a)(ii) and (4)(e)(iii).

The second 2014 amendment (ch. 430) deleted "and" from the end of (3)(m) and (3)(n); and added (3)(o).

Cross References — Disclosure of disbursement and payment of welfare assistance, see § 43-1-19.

Federal Aspects — Federal Social Security Act, see 42 USCS §§ 301 et seq.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is codified primarily as 8 USCS §§ 1611 et seq. and 42 USCS §§ 601 et seq.

JUDICIAL DECISIONS

1. In general.

This chapter of the 1942 Code, relating to child welfare, and the administrative regulations issued thereunder with respect to the amount of aid granted families with dependent children, were not shown to have violated any federal social security or welfare acts. Ward v. Winstead, 314 F. Supp. 1225 (N.D. Miss. 1970), appeal dismissed, 400 U.S. 1019, 91 S. Ct. 587, 27 L. Ed. 2d 630 (1971).

RESEARCH REFERENCES

ALR. Income tax refund as income or resource to be considered in determining eligibility for benefits under aid to families with dependent children program. 3 A.L.R.4th 1074.

Eligibility for welfare benefits, under maximum-assets limitations, as affected by expenditures or disposal of assets. 19 A.L.R.4th 146.

What constitutes income, under 7 USCS § 2014(d), (k), for purposes of determining eligibility for food stamps. 102 A.L.R. Fed. 160.

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 6-24, 26-31, 52-53.

Lawyers' Edition. Supreme Court's views as to construction and application of Aid to Families with Dependent Children

(AFDC) provisions of Social Security Act (42 USCS §§ 601-615). 84 L. Ed. 2d 917.

§ 43-17-6. Written screening questionnaire for certain adult applicants for TANF benefits; purpose; drug test; substance use disorder treatment plan; termination of cash assistance.

(1) As used in this section:

(a) "Adult" means a person who is eighteen (18) years of age or older.

(b) "Department" means the Department of Human Services.

(c) "Drug" means a controlled substance, as defined in Section 41-29-105, for which a person does not have a valid prescription.

(d) "Drug test" means a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person's body fluids.

(2) Adult applicants for Temporary Assistance for Needy Families (TANF) benefits in the assistance unit who otherwise qualify for cash assistance under the TANF program shall be required to complete a written screening questionnaire designed to determine the likelihood of the person having a substance use disorder.

(3) If the results of the written screening questionnaire indicate a reasonable likelihood that an adult recipient may have a substance use disorder involving the misuse of a drug, the department shall require the person to submit to a drug test at the department's expense in order to continue to receive cash assistance under the TANF program.

(4) If an adult recipient refuses to take the required drug test, the department shall terminate cash assistance for the person and the person may not reapply for cash assistance for:

(a) Ninety (90) days after a first refusal to take a drug test within one (1) year; or

(b) One (1) year after a second refusal to take a drug test within one (1) year.

(5) A drug test shall be administered with due regard to the privacy and dignity of the person being tested.

(6) Before taking a drug test, an adult recipient may advise the person administering the test regarding any prescription or over-the-counter medication that the person is taking.

(7) The result of a drug test is a private record and disclosure to a third party is prohibited.

(8) If an adult recipient tests negative for the unlawful use of a drug after taking a drug test, the person remains eligible for cash assistance, subject to the other TANF eligibility requirements.

(9) If an adult recipient tests positive for the unlawful use of a drug after taking a drug test, the person:

(a) Shall be given a list of approved substance use disorder treatment providers that are available in the area in which the person resides; and

(b) May continue to receive benefits if the person enters into and follows the requirements of a substance use disorder treatment plan, including:

(i) Receiving treatment from an approved substance use disorder treatment provider for at least sixty (60) days;

(ii) Testing negative for the unlawful use of a drug:

1. In each later drug test required by department rule during treatment; and

2. In an additional drug test given at the conclusion of treatment; and

(iii) Meeting the other TANF requirements for receiving cash assistance.

(10) If an adult recipient declines to enter into a substance use disorder treatment plan, or if the recipient enters into but fails to meet a requirement of a substance use disorder treatment plan, including if the person refuses to take a drug test required by a substance use disorder treatment plan or tests positive for the unlawful use of a drug in a drug test required by a substance use disorder treatment plan, the department shall terminate cash assistance for the person and the person may not reapply for cash assistance for:

(a) Ninety (90) days after the day on which the department determines that the person is no longer eligible for cash assistance; or

(b) One (1) year after the day on which the department determines that the person is no longer eligible for cash assistance, if the department has previously determined on at least one (1) other occasion in the past year that the person is no longer eligible for cash assistance.

SOURCES: Laws, 2014, ch. 430, § 1, eff from and after July 1, 2014.

§ 43-17-7. Duties of State Department of Human Services.

(1) The State Department shall:

(a) Supervise the administration of the Temporary Assistance to Needy Families (TANF) program under this chapter by the county departments;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this chapter. All rules and regulations made by the state department shall be binding on the counties and shall be complied with by the respective county departments;

(c) Prescribe the form of, and print and supply to the county departments such forms as it may deem necessary and advisable;

(d) Cooperate with the federal government in matters of mutual concern pertaining to the TANF program;

(e) Make such reports in such form and containing such information as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(f) Publish an annual report and such interim reports as may be necessary;

(g) Establish rules and regulations restricting the use or disclosure of information, records, papers, files and communications concerning applicants and recipients to purposes directly connected with the administration of the TANF program, in compliance with federal law;

(h) When the state agency has reason to believe that the home in which a relative and child receiving TANF assistance reside is unsuitable for the child because of the neglect, abuse or exploitation of such child, the state department shall bring such condition to the attention of the appropriate court or law enforcement agencies, and provide such data with respect to the situation as the department may have;

(i) As required by federal law, to provide for the development and implementation of a program under which the department will undertake, in the case of a child born out of wedlock who is receiving TANF assistance authorized herein, to establish the paternity of such child and secure support for him; and, in the case of any child receiving TANF assistance from the department who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other states to obtain or enforce court orders for support;

(j) Provide for entering into cooperative arrangements with appropriate courts and law enforcement officials to assist the department in administering the program referred to in paragraph (i), including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and with respect to any other matters of common concern to such courts or officials in the department.

(2) The Department of Human Services shall include the following agencies currently providing services to TANF and food stamp recipients in any planning activities with respect thereto, and those agencies shall cooperate with the department and provide information as necessary in order to ensure the full utilization of all economic assistance programs: the State Department of Mental Health, the State Department of Rehabilitation Services, the Mississippi Department of Corrections, the Mississippi Department of Transportation, the State Department of Public Safety, the Division of Medicaid, the State Department of Health and the State Department of Education.

SOURCES: Codes, 1942, § 7174; Laws, 1940, ch. 294; Laws, 1968, ch. 562, § 4; Laws, 1997, ch. 316, § 4, eff from and after passage (approved March 12, 1997).

Cross References — Department of Human Services, generally, see § 43-1-1.

§ 43-17-9. Duties of county departments.

The county departments shall:

(a) Administer the provisions of this chapter relating to the TANF program in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of this chapter;

(b) Report to the state department at such times and in such manner and form as the state department may from time to time direct.

SOURCES: Codes, 1942, § 7175; Laws, 1940, ch. 294; Laws, 1997, ch. 316, § 5, eff from and after passage (approved March 12, 1997).

Cross References — County departments of public welfare, generally, see § 43-1-9.

§ 43-17-11. Application for assistance.

Application for TANF assistance under this chapter shall be made to the county department of the county in which the dependent child resides. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state department. Such application shall be made by the person with whom the child is living and shall contain information as to the age and residence of the child and such other information as may be required by the rules and regulations of the state department. One (1) application may be made for several children of the same family if they reside with the same person.

SOURCES: Codes, 1942, § 7176; Laws, 1940, ch. 294; Laws, 1997, ch. 316, § 6, eff from and after passage (approved March 12, 1997).

§ 43-17-13. Investigation of applications.

Whenever a county department receives a notification of the dependency of a child or an application for TANF assistance, an investigation and record shall promptly be made of the circumstances in order to ascertain the dependency of the child and the facts supporting the application and in order to obtain such other information as may be required by the rules of the state department.

The investigation may include a visit to the home of the child and/or the person with whom the child will live during the time TANF assistance is granted.

SOURCES: Codes, 1942, § 7177; Laws, 1940, ch. 294; Laws, 1987, ch. 326, § 1; Laws, 1997, ch. 316, § 7, eff from and after passage (approved March 12, 1997).

§ 43-17-15. Granting of assistance.

Upon the completion of such investigation the county department shall decide whether the child is eligible for TANF assistance under the provisions of this chapter, and determine in accordance with the rules and regulations of the state department the amount of such assistance and the date on which such assistance shall begin. The county department shall notify the applicant of its decision.

SOURCES: Codes, 1942, § 7178; Laws, 1940, ch. 294; Laws, 1997, ch. 316, § 8, eff from and after passage (approved March 12, 1997).

Cross References — Disclosure of records of disbursements and payments of public assistance, see § 43-1-19.

Acceptance of public assistance for child as assignment to state department of human services of recipient's rights against nonsupporting parent, see § 43-19-35.

Protection from Domestic Abuse Law and domestic violence shelters, see §§ 93-21-1 et seq. and 93-21-101 et seq.

§ 43-17-17. Appeal to the State Department of Human Services.

If an application is not acted upon by the county department within a reasonable time, not to exceed thirty (30) days, after the filing of the application, or is denied in whole or in part, or if any award of TANF assistance is modified or cancelled under any provision of this chapter, the applicant or recipient may appeal to the state department in the manner and form prescribed by the state department. The state department shall, upon receipt of such an appeal, give the applicant or recipient reasonable notice and opportunity for a fair hearing. The state department may also, upon its own motion, review any decision of a county department, and may consider any application upon which a decision has not been made by the county department within a reasonable time. The state department may make such additional investigation as it may deem necessary, and shall make such decision as to the granting of TANF assistance and the amount of assistance to be granted as in its opinion is justified and in conformity with the provisions of this chapter. Applicants or recipients affected by such decisions of the state department shall, upon request, be given reasonable notice and opportunity for a fair hearing by the state department.

All decisions of the state department shall be final and shall be binding upon the county involved and shall be complied with by the county department.

SOURCES: Codes, 1942, § 7179; Laws, 1940, ch. 294; Laws, 1997, ch. 316, § 9, eff from and after passage (approved March 12, 1997).

§ 43-17-19. Periodic reconsideration and changes in amount of assistance.

All TANF assistance grants made under this chapter shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department may deem necessary or the state department may require, the amount of TANF assistance may be changed or TANF assistance may be entirely withdrawn if the state or county department finds that the child's circumstances have altered sufficiently to warrant such action.

SOURCES: Codes, 1942, § 7180; Laws, 1940, ch. 294; Laws, 1997, ch. 316, § 10, eff from and after passage (approved March 12, 1997).

§ 43-17-21. Removal to another county.

Any child qualified for and receiving TANF assistance pursuant to the provisions of this chapter in any county in this state who moves or is taken to another county in this state shall be entitled to receive TANF assistance in the county to which he has moved or is taken and the county department of the county from which he has moved shall transfer all necessary records relating to the child to the county department of the county to which he has moved.

SOURCES: Codes, 1942, § 7181; Laws, 1940, ch. 294; Laws, 1997, ch. 316, § 11, eff from and after passage (approved March 12, 1997).

§ 43-17-23. Receipt and disposition of federal and other funds and manner of disbursing same.

Federal and other funds shall be received, disposed of and disbursed in the same manner as is provided for the handling of funds as is provided in Sections 43-9-33 through 43-9-37.

SOURCES: Codes, 1942, § 7182; Laws, 1940, ch. 294; Laws, 1997, ch. 316, § 12, eff from and after passage (approved March 12, 1997).

Cross References — Repeal of Mississippi Old Age Security Law upon termination or drastic curtailment of federal aid program for aged needed or blind persons or persons with disabilities, see § 43-9-45.

§ 43-17-25. Fraudulent acts; penalties.

Whoever obtains, or attempts to obtain, or aids or abets any child to obtain by means of a willfully false statement or representation, or by impersonation or other fraudulent device:

(1) TANF assistance to which the child is not entitled; or

(2) TANF assistance greater than that to which he is justly entitled, shall be subject to the criminal penalties prescribed in Section 97-19-71; or shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Twenty-five Hundred Dollars ($2500.00) or be imprisoned for not more than twelve (12) months, or both, in the discretion of the court.

SOURCES: Codes, 1942, § 7183; Laws, 1940, ch. 294; Laws, 1997, ch. 316, § 13; Laws, 1998, ch. 324, § 1, eff from and after July 1, 1998.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

One guilty of receiving more Temporary Assistance for Needy Families than he or she was entitled to may be punished either as a felon, under § 97-19-71, or under the lesser punishment (a misdemeanor), of § 43-17-25. Taylor, November 6, 1998, A.G. Op. #98-0665.

§§ 43-17-27 and 43-17-29. Repealed.

Repealed by Laws, 1981, ch. 350, § 1, eff from and after July 1, 1981.
§ 43-17-27. [Laws, 1962, ch. 560, §§ 4, 5]
§ 43-17-29. [Laws, 1952, ch. 387, §§ 1, 2; Laws, 1958, ch. 535]

Editor's Note — Former § 43-17-27 provided for the certification of facts as to the desertion or neglect of children on whose account aid to dependent children grants are sought or received, and for proceedings against the deserting or neglectful parents.

Former § 43-17-29 provided for the filing with the county department copies of chancery court decrees dealing with the support or maintenance of children under age sixteen (16) in the county, for the making of grants of aid to dependent children for those children qualified and eligible, and for assistance to the court in securing payment of the support and maintenance payments ordered by the court.

§ 43-17-31. Repealed.

Repealed by Laws, 1997, ch. 316, § 27, eff from and after passage (approved March 12, 1997).
[Laws, 1990, ch. 356, § 1]

Editor's Note — Former § 43-17-31 provided for the establishment of an AFDC unemployed parents program.

§ 43-17-33. Entrepreneurial development; funding.

The Department of Human Services shall seek federal funds for entrepreneurial development so that recipients of Temporary Assistance for Needy Families (TANF) benefits can create jobs and provide incentives for TANF recipients in their efforts to attain self-sufficiency and independence. The TANF Implementation Council shall identify opportunities for entrepreneurial development for TANF recipients. In carrying out this program, the department shall work in conjunction with public, community and private sector entities including businesses, banks, and other institutions to develop strategies that provide training, technical assistance, planning, and research to TANF recipients in their efforts to own their own businesses. The TANF recipient must be enrolled in an allowable work activity to be considered for eligibility for the funds under this section.

SOURCES: Laws, 1997, ch. 316, § 25, eff from and after passage (approved March 12, 1997).

Cross References — Temporary Assistance to Needy Families (TANF) program, see §§ 43-17-1 et seq.

§ 43-17-35. Establishment of task force on out-of-wedlock pregnancies.

(1) In the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), the United States Congress made the following findings relating to out-of-wedlock pregnancies:

(a) The increase of out-of-wedlock pregnancies and births is well documented.

(b) An effective strategy to combat teenage pregnancy must address the issue of male responsibility, including statutory rape culpability and prevention. The increase of teenage pregnancies among the youngest girls is particularly severe and is linked to predatory sexual practices by men who are significantly older.

(c) The negative consequences of an out-of-wedlock birth on the mother, the child, the family and society are well documented.

(d) Currently thirty-five percent (35%) of children in single-parent homes are born out of wedlock, nearly the same percentage as that of children in single-parent homes whose parents are divorced. While many parents find themselves, through divorce or tragic circumstances beyond their control, facing the difficult task of raising children alone, nevertheless, the negative consequences of raising children in single-parent homes are well documented.

(e) Therefore, in light of this demonstration of the crisis in our nation, it is the sense of the Congress that prevention of out-of-wedlock births are very important government interests and the policy contained in this legislation is intended to address the crisis.

(2) The Department of Human Services shall establish a task force in compliance with Public Law 104-193, consisting of public and private organizations and individuals to review the incidence and circumstances of out-of-wedlock pregnancies in Mississippi. Based on these findings, goals will be established by the task force and a specific program will be recommended to prevent and reduce the incidence of out-of-wedlock pregnancies in Mississippi, as well as the efficiency and cost effectiveness of the program, with special emphasis on teenage pregnancies. The task force will establish numerical goals for reducing the illegitimacy ratio of the state as defined by federal law through calendar year 2005. The task force shall publish its findings and recommendations with any proposed legislation in a report to the Governor and the Legislature to be made on or before January 1, 1998.

(3) The task force established under subsection (2) of this section shall continue in existence and shall study the effect that raising the statutory age of sexual consent to age sixteen (16) has on preventing and reducing the incidence of teenage out-of-wedlock pregnancies in Mississippi from July 1, 1998, to October 1, 2001. The task force shall consider whether raising the age of sexual consent to an age above age sixteen (16) would be more effective in preventing and reducing the incidence of teenage out-of-wedlock pregnancies in Mississippi. The task force shall publish its findings and recommendations,

together with any proposed legislation, in a report to the Governor and the Legislature on or before January 1, 2002.

SOURCES: Laws, 1997, ch. 316, § 24; Laws, 1998, ch. 549, § 1; Laws, 2000, ch. 406, § 2, eff from and after July 1, 2000.

Cross References — Illegitimate children; person becoming natural parent of second illegitimate child, see § 97-29-11.

RESEARCH REFERENCES

ALR. Mistake or lack of information as to victim's age as defense to statutory rape. 46 A.L.R.5th 499.

§ 43-17-37. Repealed.

Repealed by its own terms by Laws, 2003, ch. 481, § 1, eff from and after December 31, 2005.

§ 43-17-37. [Laws, 1999, ch. 559, § 1; Laws, 2000, ch. 406, § 1; Laws, 2003, ch. 481, § 1, eff from and after July 1, 2003.]

Editor's Note — Former § 43-17-37 related to the Mississippi Reducing Out-of-Wedlock Pregnancies Incentive Grant Fund.

§ 43-17-39. Repealed.

Repealed by its own terms effective July 1, 2006.

§ 43-17-39. [Laws, 2005, ch. 500, § 1, eff from and after July 1, 2005.]

Editor's Note — Former § 43-17-39 related to the Child Care Development Fund/Temporary Assistance to Needy Families program and requirements for the program operation.

CHAPTER 18

Interstate Compact on the Placement of Children

Sec.	
43-18-1.	Execution of compact.
43-18-3.	"Appropriate public authorities" defined; powers of county departments of public welfare.
43-18-5.	"Appropriate authority in the receiving state" defined.
43-18-7.	"Executive head" defined; appointment of compact administrator.
43-18-9.	Financial responsibility for placed children.
43-18-11.	Agreements for performance of services.
43-18-13.	Compliance with requirements for visitation, inspection or supervision of children, homes and the like in another party state.
43-18-15.	Statutory provisions restricting out-of-state placement of children not applicable to placements under compact.
43-18-17.	Placement by courts of delinquent children.

§ 43-18-1. Execution of compact.

The Governor, on behalf of this state, is hereby authorized to execute a compact in substantially the following form with all other jurisdictions legally joining therein; and the legislature hereby signifies in advance its approval and ratification of such compact, which compact is as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill or mentally defective or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III.

(a) No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV.

The sending, bringing or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

ARTICLE V.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SOURCES: Laws, 1976, ch. 428, § 1; Laws, 1984, ch. 472, § 7, eff from and after July 1, 1984.

Cross References — Uniform Rules of Youth Court Practice, Interstate Compact for Placement of Children, see Unif. R. Youth Ct. Prac. Rule 34 and comments.

Comparable Laws from other States — Alabama Code, §§ 44-2-20 through 44-2-26.

Florida Annotated Statutes, §§ 409.401 through 409.405.
Arkansas Code Annotated, §§ 9-29-201 through 9-29-208.
Georgia Code Annotated, §§ 39-4-1 through 39-4-10.
Louisiana Revised Statutes Annotated, Children's Code §§ 1608 et seq.
North Carolina General Statutes, §§ 7B-3800 through 7B-3806.
South Carolina Code Annotated, §§ 63-9-2200 through 63-9-2290.
Tennessee Code Annotated, §§ 37-4-201 through 37-4-207.
Texas Family Code, §§ 162.102 et seq.
Virginia Code Annotated, §§ 63.2-1000 through 63.2-1105.

JUDICIAL DECISIONS

1. Jurisdiction.

Where a child was given into the care of relatives in North Carolina by the Department of Human Services (DHS) under the auspices of the compact, the DHS retained jurisdiction over the child as the "sending agency," and it was immaterial that the youth court judge "dismissed" the orders which originally gave custody to DHS. Oktibbeha County Dep't of Human Servs. v. N. G., 782 So. 2d 1226 (Miss. 2001).

The authority of the Department of Human Services to return a child, who had been sent to live with relatives in North Carolina, to Mississippi under the Interstate Compact on the Placement of Children was not diminished by the Uniform Child Custody Jurisdiction Act as the child's mother had not been discharged by the court and there was no decree in a Mississippi court removing permanent custody from her and granting it to the North Carolina relatives. Oktibbeha County Dep't of Human Servs. v. N. G., 782 So. 2d 1226 (Miss. 2001).

ATTORNEY GENERAL OPINIONS

Youth court judge can place delinquent child in out of state institution pursuant to Interstate Compact on the Placement of Children, Section 43-18-1 et seq. of the Code; but nothing in the Compact specifically authorizes law enforcement officers to maintain custody of persons outside state. Agin, March 2, 1994, A.G. Op. #93-1011.

The Interstate Compact on the Placement of Children is applicable when a mother brings her child from another state to Mississippi and places the child with a private child placement agency, signing all the necessary forms, as the natural mother is a sending agency who brought her child from another state to Mississippi and placed the child as a disposition preliminary to a possible adoption. Taylor, Dec. 21, 1999, A.G. Op. #99-0308.

The Interstate Compact on the Placement of Children is applicable when a pregnant woman comes to Mississippi and enters a program operated by a private child placement agency, the child is born and placed with the agency for adoption, and the mother returns to her home state. Taylor, Dec. 21, 1999, A.G. Op. #99-0308.

The Interstate Compact on the Placement of Children might apply when a child is located in Mississippi, an out-of-state adoptive couple travels to Mississippi and adopts the child in Mississippi, and having received a final decree of adoption, they return to their home state with the child, if the child was initially located in Mississippi from across state lines or placed in Mississippi by out-of-state parties. Taylor, Dec. 21, 1999, A.G. Op. #99-0308.

RESEARCH REFERENCES

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

Jean Koh Peters Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions (Michie).

§ 43-18-3. "Appropriate public authorities" defined; powers of county departments of public welfare.

The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the state department of public welfare. Any county department of public welfare, likewise, when directed by the commissioner of the state department of public welfare shall be authorized to receive and act with reference to notices required by said Article III.

SOURCES: Laws, 1976, ch. 428, § 3, eff from and after passage (approved May 6, 1976).

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-18-5. "Appropriate authority in the receiving state" defined.

As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the state department of public welfare or, with the approval of the commissioner of the state department of public welfare, any county department of public welfare.

SOURCES: Laws, 1976, ch. 428, § 4, eff from and after passage (approved May 6, 1976).

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-18-7. "Executive head" defined; appointment of compact administrator.

As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the governor of the State of Mississippi. The Governor of the State of Mississippi is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

SOURCES: Laws, 1976, ch. 428, § 9, eff from and after passage (approved May 6, 1976).

§ 43-18-9. Financial responsibility for placed children.

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of any other state laws fixing responsibility for the support of children also may be invoked.

SOURCES: Laws, 1976, ch. 428, § 2, eff from and after passage (approved May 6, 1976).

§ 43-18-11. Agreements for performance of services.

The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state, or subdivision or agency thereof, shall not be binding unless it has the approval in writing of the state department or agency with funds for that purpose or with the approval of the county department or agency with funds for that purpose.

SOURCES: Laws, 1976, ch. 428, § 5, eff from and after passage (approved May 6, 1976).

§ 43-18-13. Compliance with requirements for visitation, inspection or supervision of children, homes and the like in another party state.

Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under any statutes or court decisions of this state shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

SOURCES: Laws, 1976, ch. 428, § 6, eff from and after passage (approved May 6, 1976).

§ 43-18-15. Statutory provisions restricting out-of-state placement of children not applicable to placements under compact.

The provisions of state laws restricting out-of-state placement of children shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

SOURCES: Laws, 1976, ch. 428, § 7, eff from and after passage (approved May 6, 1976).

§ 43-18-17. Placement by courts of delinquent children.

Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

SOURCES: Laws, 1976, ch 428, § 8, eff from and after passage (approved May 6, 1976).

CHAPTER 19

Support of Natural Children

In General. [Repealed].
Child Support Unit 43-19-31
Child Support Award Guidelines 43-19-101

IN GENERAL
[REPEALED]

Sec.
43-19-1 through 43-19-7. Repealed.

§§ 43-19-1 through 43-19-7. Repealed.

Repealed by Laws, 1981, ch. 350, § 1, eff from and after July 1, 1981. [Laws, 1960, ch. 560, §§ 1-5]

Editor's Note — Former § 43-19-1 provided for the reporting of natural parents deserting or refusing to support their natural children and for proceedings to establish paternity and to require support.

Former § 43-19-3 provided for proceedings in the youth court to determine whether a child is a neglected child and, if so adjudged, for placement of the child under supervision.

Former § 43-19-5 provided for the location of natural parents who desert or fail to provide for the natural children and for the disclosure of information.

Former § 43-19-7 designated parties to suits and provided for exercise of authority of the state and county welfare departments and personnel at the request of the youth court.

CHILD SUPPORT UNIT

Sec.
43-19-31. Child support unit authorized; purposes.
43-19-33. Force and effect of written stipulated agreement to support and written admission of paternity containing agreement of support.
43-19-34. Stipulated agreement for modification of support order; Child Support Unit authorized to send motion and notice of intent to modify; reviews for possible modification to be conducted on 3-year cycle; only upward adjustments to be ordered retroactively; noncustodial parent's arrearage not to bar review or downward modification.
43-19-35. Acceptance of public assistance for child as assignment to department of recipient's rights against nonsupporting parent; status of attorney initiating proceedings.
43-19-37. Court orders of support to direct payment of support, attorney's fees and court costs to child support unit and not recipient.
43-19-39. Distribution of child support payments; suits by child support unit; citation of noncooperating recipient parent; withholding payments for reimbursement of erroneous past payments.
43-19-41. Effect of applicant's or recipient's refusal to assist in finding absent parent or in securing support or establishing paternity.
43-19-43. Husband-wife privilege; self-incriminating testimony.

43-19-44. Safeguarding of personal data where evidence of risk of harm; definitions; petition for release of information.
43-19-45. State parent locator service; cooperation of state agencies and the like with Child Support Unit; confidentiality of records; authority to request employment verification, address and social security number of absent or nonsupporting parent or alleged parent; confidentiality of records; penalties [Repealed effective July 1, 2019].
43-19-46. Report by employer to Directory of New Hires [Repealed effective July 1, 2019].
43-19-47. Employment by child support unit of staff attorneys.
43-19-48. Use of data match systems by Department of Human Services for noncustodial parents delinquent in child support payments.
43-19-49. Employment by child support unit of investigative, technical, secretarial and supportive staff.
43-19-51. Duties, powers and functions of Attorney General's office, district attorneys and county attorneys unaffected.
43-19-53. Annual report.
43-19-55. Authorization to manage bank accounts for funds received as incentives from federal government and as income tax offsets.
43-19-57. Administrative subpoenas.
43-19-58. Appeals process for imposition of civil penalties.
43-19-59. Child Support Unit to use high-volume automated administrative enforcement to enforce out-of-state support orders.
43-19-61. Child Support Prosecution Trust Fund created; purpose.

§ 43-19-31. Child support unit authorized; purposes.

The Department of Human Services is hereby authorized and empowered to establish a single and separate Child Support Unit for the following purposes:

(a) To develop and implement a nonsupport and paternity program and institute proceedings in the name of the Department of Human Services or in the name of the recipient in any court of competent jurisdiction in any county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found;

(b) To secure and collect support by any method authorized under state law and establish paternity for any child or children receiving aid from the department any form of public assistance, including, but not limited to, medical assistance, foster care, food stamps, TANF, or any other program under the federal Social Security Act, from a parent or any other person legally liable for such support who has either failed or refused to provide support, deserted, neglected or abandoned the child or children, including cooperating with other states in establishing paternity, locating absent parents and securing compliance with court orders for support of Temporary Assistance for Needy Families (TANF) children; the department may petition the court for the inclusion of health insurance as part of any child support order on behalf of any child receiving aid from the department unless good cause for noncooperation, as defined by the Social Security Act or the Mississippi Department of Human Services, is established. Unless notified to the contrary, whenever a child or children for whom child support services have been provided ceases to receive public assistance, the department will continue to provide services and establish paternity, secure and collect such support payments from a parent or any other person legally liable for such support in accordance with the standards prescribed pursuant to the federal Social Security Act;

(c) To accept applications for child support enforcement services to establish paternity, secure and collect support from any proper party or person as defined by Title IV-D of the federal Social Security Act notwithstanding the fact that the child or children do not currently receive or have never received public assistance. The department shall have the authority to secure and collect support by any method authorized under state law and establish paternity for any child or children on behalf of a recipient of child support services, including individuals who do not currently receive or have never received public assistance from a parent or any other person legally liable for such support who has either failed or refused to provide support, deserted, neglected or abandoned the child or children, including cooperating with other states in establishing paternity, locating absent parents and securing compliance with court orders for support; the department may petition the court for the inclusion of health insurance as part of any child support order on behalf of such recipients of child support services. The proceeds of any collections resulting from such application shall be distributed in accordance with the standards prescribed in the federal Social Security Act;

(d) The department shall seek to recover from the individual who owes a support obligation to any individual who is a recipient of Title IV-D services as set forth in paragraph (b) or (c) on whose behalf the department is providing services, upon judicial proceedings conducted thereon after advance notice to such obligor, reasonable attorney's fees and court costs, in excess of any administrative fees collected and in excess of amounts of current support owed by the obligor, which the department incurs in recovering and collecting the support obligation, such costs and fees as the department recovers to be deposited in the Special Fund of the Mississippi Department of Human Services which is hereby established for the pursuit and collection of child support;

(e) To initiate contempt of court proceedings or any other remedial proceedings necessary to enforce (i) any order or decree of court relating to child support, and (ii) any order or decree of court relating to the maintenance and/or alimony of a parent where support collection services on his or her child's behalf are being provided by the department;

(f) To secure and collect by any method authorized under state law any maintenance and/or alimony on behalf of a parent whose child or children's support is being collected by the department. The department shall collect only such maintenance and/or alimony as is ordered or decreed by the court, and only in the event that the minor child and parent to whom such maintenance and/or alimony has been ordered are living in the same household;

(g) To obtain restitution of monies expended for public assistance from a parent or any other person legally liable for the support of any child or children receiving aid from the department; said action for restitution shall arise from the payment of public assistance for the dependent child or children and shall be for the amount of the public assistance paid. Said action for restitution shall not arise against the parent or other person legally responsible who receives public assistance for the benefit of any dependent child or children. When a court order of support has been issued, the amount recoverable shall be limited to the amount of the court order;

(h) Setting off against a debtor's income tax refund or rebate any debt which is in the form of a liquidated sum due and owing for the care, support or maintenance of a child;

(i) To have full responsibility in the aforementioned cases for initiating actions under the Uniform Interstate Family Support Act and for responding to the actions of other jurisdictions under said law when Mississippi is the responding state; however, this shall not impair private litigants' rights to proceed under any applicable interstate enforcement mechanisms;

(j) To enter into contracts for the purpose of performing any test which the department may, from time to time, require;

(k) To maintain a Central Receipting and Disbursement Unit to which all payments required by withholding orders and orders for support in all actions to which the Department of Human Services is a party shall be forwarded, and from which child support payments ordered by the court in actions to which the Department of Human Services is a party shall be disbursed to the custodial parent or other such party as may be designated by the court order. The Central Receipting and Disbursement Unit shall be operated by the Department of Human Services or any financial institution having operations and qualified to do business in Mississippi, whose deposits are insured by the Federal Deposit Insurance Corporation. The department shall conduct cost-benefit analyses to determine and utilize the more cost efficient manner of operating the unit;

(*l*) To maintain a Mississippi Department of Human Services Case Registry containing records with respect to:

(i) Each case in which services are being provided by the department under this section; and

(ii) Each support order established or modified in Mississippi on or after October 1, 1998; and

(iii) The Administrative Office of Courts, as established by Section 9-21-1, Mississippi Code of 1972, in consultation with the Mississippi Department of Human Services, shall devise, promulgate and require the use of a Uniform Child Support Order Tracking System.

1. Information collected from case filing forms shall be furnished to the Mississippi Department of Human Services, Division of Child Support Enforcement, in order that compliance with court-ordered obligations of support may be tracked with specificity throughout the duration of said obligations and any subsequent proceedings.

2. Such tracking system shall include: 1. the names, residential and mailing addresses, telephone numbers, Social Security numbers, driver's license numbers and dates of birth of each child and parent named in or subject to the court order; 2. the court cause number of the action; 3. name, address and telephone number of employer; 4. any restraining or protective order indicating domestic violence; and 5. any other information which may be used for the purpose of identifying any person named in or subject to the order or for the purposes of establishing, enforcing or modifying a child support order;

(m) To take administrative actions relating to genetic testing, determine paternity, establish child support orders, modification of child support orders, income withholding, liens and subpoenas without the necessity of obtaining an order from any judicial or other administrative tribunal with respect to cases initiated or enforced by the department pursuant to Title IV-D of the Social Security Act;

(n) To have the authority to use high-volume automated administrative enforcement in interstate cases to the same extent as used for intrastate cases, in response to a request made by another state to enforce support orders; and

(o) To provide any child support enforcement or other service as may be required by the United States of America, Department of Health and Human Services, Family Support Administration, Office of Child Support Enforcement or their successor pursuant to federal law or regulation.

SOURCES: Laws, 1976, ch. 483, § 1; Laws, 1982, ch. 320; Laws, 1983, ch. 393, § 1; Laws, 1985, ch. 518, § 14; Laws, 1987, ch. 455, § 5; Laws, 1989, ch. 440, § 1; Laws, 1997, ch. 588, § 1; Laws, 1999, ch. 512, § 1; Laws, 2003, ch. 514, § 1, eff from and after passage (approved Apr. 19, 2003.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (*l*)(iii)2 and (n). The word "and" was deleted at the end of (*l*)(iii)2 and added "and" at the end of (n). The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Provision relative to inclusion of medical support in child support orders, see § 43-13-303.

Administration of Child Welfare Law, see §§ 43-15-1 et seq.

Temporary Assistance to Needy Families Program generally, see §§ 43-17-1 et seq.

Status of attorney initiating proceedings under §§ 43-19-31 through 43-19-53, see § 43-19-35.

Individual's claim for unemployment compensation who owes child support obligations, and the worker's compensation commission's duty to notify the child support enforcement agency of the individual's eligibility for benefits, see § 71-5-516.

Uniform Law on Paternity, see §§ 93-9-1 et seq.

Authorization for court ordered blood tests and other tests for purpose of establishing paternity, see § 93-9-21.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

JUDICIAL DECISIONS

1. In general.

In simultaneous divorce and paternity actions, the biological father sought to have parental rights terminated, and the husband, who believed for years that the husband was the child's father, sought to be declared the child's legal father, but joinder of claims was not allowed, and with regard to the separate paternity action, the biological father was ordered to pay child support until some further order in the divorce proceedings supplanted that obligation. Griffith v. Pell, 881 So. 2d 227 (Miss. Ct. App. 2003), affirmed by 881 So. 2d 184, 2004 Miss. LEXIS 975 (Miss. 2004).

State human service agency was authorized to bring an action on behalf of the mother to secure and collect any child support that might be owed to her, and thus, had standing in court to pursue a child support claim. State Dep't of Human Servs. v. Shelby, 802 So. 2d 89 (Miss. 2001).

State human service agency was authorized by Miss. Code Ann. § 43-19-31(o) to provide any child support enforcement or other service as might be required by the Department of Health and Human Services pursuant to federal law or regulation, and thus, had standing in any state court to pursue claim for child support against the father. State Dep't of Human Servs. v. Shelby, 802 So. 2d 89 (Miss. 2001).

State human service agency was authorized to initiate support proceedings for mother pursuant to Miss. Code Ann. § 43-19-31(c) as the mother was not a part of the Temporary Assistance for Needy Families program, and thus, it had standing to pursue a child support claim against the father in state court. State Dep't of Human Servs. v. Shelby, 802 So. 2d 89 (Miss. 2001).

The Mississippi Department of Human Services is authorized to pursue child support obligations only for persons receiving aid from the department. Miss. Dep't of Human Servs. v. Shelby, — So. 2d —, 2001 Miss. LEXIS 209 (Miss. Aug. 23, 2001), opinion withdrawn by, substituted opinion at 802 So. 2d 89, 2001 Miss. LEXIS 326 (Miss. 2001).

Putative father sued for support in both maternity proceeding under § 93-9-17 and support proceeding under § 43-19-33 has right to have cause heard in county in which he resides, if he is resident of state of Mississippi; defendant must timely assert right to venue in county of residence via Rule 12(b)(3) motion, and failure to do so amounts to waiver. Belk v. State Dep't of Pub. Welfare, 473 So. 2d 447 (Miss. 1985).

Under the terms of § 91-1-15, the Department of Welfare, which had the authority under §§ 43-19-31 and 43-19-35 to institute paternity proceedings to obtain repayment for support of a dependant child under the Aid to Dependent Children program (ADC) from the person legally obligated to pay that support, would be held to a standard of proof by preponderance of the evidence where the proceeding was brought prior to the death of the putative father, rather than the standard of clear and convincing evidence that applies to an adjudication after the death of the father to establish heirship. Ivy v. State Dep't of Pub. Welfare, 449 So. 2d 779 (Miss. 1984).

In a proceeding brought by the legal section of the department of public welfare, pursuant to Miss. Code Ann. §§ 43-19-31 and 93-9-9, to adjudicate paternity and responsibility for child support, the mother is not a necessary party; the only interest of the department of public welfare is in seeing that the taxpayers are relieved of some, or all of the burden in supporting an indigent child. McCollum v. State Dep't of Pub. Welfare, 447 So. 2d 650 (Miss. 1984).

Proper venue for an action involving determination of paternity would be the county where the father resides if he resides or is domiciled within the state, even though the action also involved a determination of child support, for which proper venue would be the county of the mother's residence, the county of the father's residence, or the county of the child's residence. Metts v. State Dep't of Pub. Welfare, 430 So. 2d 401 (Miss. 1983).

RESEARCH REFERENCES

ALR. Stepparent's postdivorce duty to support stepchild. 44 A.L.R.4th 520.

Excessiveness or inadequacy of lump-sum alimony award. 49 A.L.R.5th 441.

Enforcement of claim for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

Practice References. Family Law and Practice (Matthew Bender).

Family Law Litigation Guide with Forms: Discovery, Evidence, Trial Practice (Matthew Bender).

§ 43-19-33. Force and effect of written stipulated agreement to support and written admission of paternity containing agreement of support.

(1) In lieu of legal proceedings instituted to obtain support for a dependent child from the responsible parent, a written stipulated agreement to support said child by periodic payments executed by the responsible parent when acknowledged before a clerk of the court having jurisdiction over such matters or a notary public and filed with and approved by the judge of said court shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases.

(2) In lieu of legal proceedings instituted to establish paternity, a written admission of paternity containing a stipulated agreement of support executed by the putative father of the dependent child, when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child, when acknowledged by the putative father before a clerk of the court having jurisdiction over such matters or a notary public and filed with and approved by the judge of said court, shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement, as an order of filiation and support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases.

(3) At any time after filing with the court having continuing jurisdiction of such matters of an acknowledgment of paternity in which a provision of support has not been entered, upon notice the defendant shall be required to appear in court at any time and place named therein, to show cause, if any he can, why the court should not enter an order for the support of the child by periodic payments. The order may include provisions for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expenses of the action under this subsection on the acknowledgment of paternity previously filed with said court. Notice by the department to the defendant shall be given by certified mail, restricted

delivery, return receipt requested at his last known mailing address and without the requirement of a summons being issued, and shall be deemed complete as of the date of delivery as evidenced by the return receipt. The required notice may also be delivered by personal service in accordance with Rule 4 of the Mississippi Rules of Civil Procedure insofar as service of an administrative order or notice is concerned. Provided, that in the case of a child who, upon reaching the age of twenty-one (21) years, is mentally or physically incapable of self-support, the putative father shall not be relieved of the duty of support unless said child is a long-term patient in a facility owned or operated by the State of Mississippi. The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court.

(4) Such agreements of support, acknowledgments and affirmations of paternity and support shall be sworn to and shall be binding on the person executing the same whether he be an adult or a minor and may include provisions for the reimbursement of medical expenses incident to the pregnancy and birth of the child, accrued maintenance and reasonable expenses of any action previously filed before the court.

(5) In lieu of legal proceedings instituted to enforce an order for support, a written stipulated agreement for the provision of periodic payments towards an arrearage executed by the defendant when acknowledged before a clerk of the court having jurisdiction over such matters or a notary public and filed with and approved by the judge of said court shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement as a judgment for overdue support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases.

(6) All agreements entered into under the provisions as set forth hereinabove shall be filed by the clerk of the court having jurisdiction over such matters in the county in which they are entered and filing fees shall be taxed to the responsible parent.

SOURCES: Laws, 1976, ch. 483, § 2; Laws, 1983, ch. 393, § 2; Laws, 1992, ch. 390, § 1; Laws, 1999, ch. 512, § 13, eff from and after July 1, 1999.

Cross References — Uniform Law on Paternity, see §§ 93-9-1 et seq.

JUDICIAL DECISIONS

1. In general.

Chancery court did not abuse its discretion by declining to require a parent to provide post-majority financial support for the parent's child because Mississippi law did not vest the court with the authority to mandate that parents financially support their offspring post-majority. Hays v. Alexander, 114 So. 3d 704 (Miss. 2013).

Where proceedings involved determination of both paternity and child support, defendant would be entitled to a jury trial on the issue of paternity, even though the child support statute did not require a jury trial. Metts v. State Dep't of Pub. Welfare, 430 So. 2d 401 (Miss. 1983).

ATTORNEY GENERAL OPINIONS

Stipulation in lieu of legal proceedings pursuant to Section 43-19-33 is not contested and should be considered ex parte with $25 fee. Jones Nov. 10, 1993, A.G. Op. #93-0514.

RESEARCH REFERENCES

ALR. Parent's obligation to support adult child. 1 A.L.R.2d 910.

What amounts to recognition within statutes affecting the status or rights of illegitimates. 33 A.L.R.2d 705.

Validity and construction of putative father's promise to support or provide for illegitimate child. 20 A.L.R.3d 500.

Death of putative father as precluding action for determination of paternity or for child support. 58 A.L.R.3d 188.

Support provisions of judicial decree or order as limit of parent's liability for expenses of child. 35 A.L.R.5th 757.

§ 43-19-34. Stipulated agreement for modification of support order; Child Support Unit authorized to send motion and notice of intent to modify; reviews for possible modification to be conducted on 3-year cycle; only upward adjustments to be ordered retroactively; noncustodial parent's arrearage not to bar review or downward modification.

(1) In lieu of legal proceedings instituted to obtain a modification for an order for support, a written stipulated agreement for modification executed by the responsible parent when acknowledged before a clerk of the court having jurisdiction over those matters or a notary public and filed with and approved by the judge of that court shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement as an order for modification of support entered by the court, and shall be enforceable and subject to later modification in the same manner as is provided by law for orders of the court in those cases.

(2) With respect to a child support order in cases initiated or enforced by the Department of Human Services under Title IV-D of the Social Security Act, in which the department has determined that a modification is appropriate, the department shall send a motion and notice of intent to modify the order, together with the proposed modification of the order under this section to the last known mailing address of the defendant. The notice shall specify the date and time certain of the hearing and shall be sent by certified mail, restricted delivery, return receipt requested; notice shall be deemed complete as of the date of delivery as evidenced by the return receipt. The required notice may also be delivered by personal service in accordance with Rule 4 of the Mississippi Rules of Civil Procedure insofar as it may be applied to service of an administrative order or notice. The defendant may accept the proposed

modification by signing and returning it to the department before the date of hearing for presentation to the court for approval. If the defendant does not sign and return the proposed modification, the court shall on the date and time previously set for hearing review the proposal and make a determination as to whether it should be approved, in whole or in part.

(3) Every three (3) years, the Department of Human Services shall notify both parents of their right to request a review, and upon the request of either parent, or if there is an assignment under Section 43-19-35, the department, after a review and determination of appropriateness, or either parent may seek an adjustment to a support order being enforced under Section 43-19-31 in accordance with the guidelines established under Section 43-19-101, if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines, taking into account the best interests of the child involved. If a recipient of Title IV-D services receives TANF, the Department of Human Services shall conduct a review every three (3) years and, after a determination of appropriateness, shall seek an adjustment to a support order according to the guidelines under Section 43-19-101. No proof of a material change in circumstances is necessary in the three-year review for adjustment under this subsection (3). A preexisting arrearage in support payments shall not serve as a bar to the department's review and adjustment procedure. Proof of a material change in circumstances is necessary for modification outside the three-year cycle.

(4) Any order for the support of minor children, whether entered through the judicial system or through an expedited process, shall not be subject to a downward retroactive modification. An upward retroactive modification may be ordered back to the date of the event justifying the upward modification.

(5) If a downward modification is determined to be warranted under the guidelines contained in subsection (3), the noncustodial parent's arrearage, if any, shall not be a basis for contesting the downward modification in any later legal proceedings.

SOURCES: Laws, 1999, ch. 512, § 12; Laws, 2000, ch. 530, § 1; Laws, 2007, ch. 548, § 1; Laws, 2010, ch. 465, § 4; Laws, 2011, ch. 530, § 8; Laws, 2012, ch. 552, § 1, eff from and after passage (approved May 22, 2012.)

Cross References — Temporary Assistance to Needy Families (TANF) program, see §§ 43-17-1 et seq.

Federal Aspects — Title IV-D of the Social Security Act appears as 42 USCS §§ 651 et seq.

JUDICIAL DECISIONS

1. Retroactive termination of support improper.
2. Retroactive upward modification of support.
3. Retroactive Downward Modification of Support.

1. Retroactive termination of support improper.

Under Miss. Code Ann. § 43-19-34(4), a father's child-support obligations continued to vest while his counter-complaint for modification was pending; therefore, the trial court erred in terminating his support obligation for his oldest child retroactive to the date of his counter-complaint. A.M.L. v. J.W.L., 98 So. 3d 1001 (Miss. 2012).

2. Retroactive upward modification of support.

Under Miss. Code Ann. § 43-19-34(4), an upward retroactive modification of a father's child support obligation was permissible, but not mandatory; therefore, the trial court did not clearly err in declining to make his increased support retroactive to the date of the mother's complaint for modification. A.M.L. v. J.W.L., 98 So. 3d 1001 (Miss. 2012).

3. Retroactive Downward Modification of Support.

Chancellor erred in allowing a retroactive downward modification to a father's child-support obligation dating back to the hearing where his testified indicating his desire not to have a relationship with his father; thus, the father was required to continue payments until the judgment ordering modification was entered. Finch v. Finch, 137 So. 3d 227 (Miss. 2014).

Chancellor did not err in temporarily reducing the father's child support for a year because he could pay the amount he had voluntarily agreed was needed to support his two children by rearranging his priorities, financial affairs, and employment; however, downward retroactive modification of child support was prohibited. Frazier v. Frazier, 136 So. 3d 1068 (Miss. Ct. App. 2013), writ of certiorari denied en banc by 136 So. 3d 437, 2014 Miss. LEXIS 220 (Miss. 2014), writ of certiorari denied en banc by 2014 Miss. LEXIS 221 (Miss. Apr. 24, 2014).

§ 43-19-35. Acceptance of public assistance for child as assignment to department of recipient's rights against nonsupporting parent; status of attorney initiating proceedings.

(1) By currently or previously accepting public assistance or making application for child support services for and on behalf of a child or children, the recipient shall be deemed to have made an assignment to the State Department of Human Services of any and all rights and interests in any cause of action, past, present or future, that said recipient or the children may have against any parent failing to provide for the support and maintenance of said minor child or children; said department shall be subrogated to any and all rights, title and interest the recipient or the children may have against any and all property belonging to the absent or nonsupporting parent in the enforcement of any claim for child or spousal support, whether liquidated through court order or not. The recipient of Title IV-D services shall also be deemed, without the necessity of signing any document, to have appointed the State Department of Human Services to act in his or her, as well as the children's, name, place, and stead to perform the specific act of instituting suit to establish paternity or secure support, collecting any and all amounts due and owing for child or spousal support or any other service as required or permitted under Title IV-D of the federal Social Security Act, and endorsing any and all drafts, checks, money orders or other negotiable instruments representing child or spousal support payments which are received on behalf of the recipient or the children, and retaining any portion thereof permitted under federal and state statutes as reimbursement for public assistance monies previously paid to the recipient or children.

(2) Court orders of support for any child or children receiving services through Title IV-D of the federal Social Security Act shall be amended, by operation of law, and without the necessity of a motion by the Child Support Unit and a hearing thereon to provide that the payment of support shall be directed by the absent parent to the Mississippi Department of Human Services Central Receipting and Disbursement Unit as provided in Section 43-19-37 and not to the recipient. The absent parent shall be notified of such amendment prior to it taking effect.

(3) Any attorney authorized by the state to initiate any action pursuant to Title IV-D of the federal Social Security Act, including, but not limited to, any action initiated pursuant to Sections 43-19-31 et seq. and 93-25-1 et seq. shall be deemed to represent the interest of the State Department of Human Services exclusively; no attorney-client relationship shall exist between said attorney and any recipient of services pursuant to Title IV-D of the federal Social Security Act for and on behalf of a child or children, regardless of the name in which the legal proceedings are initiated. Said attorney representing the state in a Title IV-D case is only authorized to appear and prosecute and/or defend issues of support and cannot in a Title IV-D case address or provide representation to the Title IV-D recipient on any other ancillary issues raised or presented in that action.

(4) Said assignment to the State Department of Human Services shall be free of any legal or equitable defense to the payment of child support that may accrue to any person legally liable for the support of any child or children receiving aid from the State Department of Human Services, as a result of the conduct of the person who is accepting public assistance for and on behalf of said child or children.

SOURCES: Laws, 1976, ch. 483, § 3; Laws, 1983, ch. 393, § 3; Laws, 1989, ch. 376, § 1; Laws, 1991, ch. 496, § 1; Laws, 1992, ch. 393, § 1; Laws, 1997, ch. 588, § 2; Laws, 2003, ch. 514, § 2, eff from and after passage (approved Apr. 19, 2003.)

Editor's Note — Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Temporary Assistance to Needy Families Program generally, see §§ 43-17-1 et seq.

Federal Aspects — Title IV-D of the federal Social Security Act, governing child support, is comprised of 42 USCS §§ 651 et seq.

JUDICIAL DECISIONS

1. In general.

Where two earlier paternity actions had been dismissed due to the the mother's non-cooperation, the dismissal with prejudice of the third petition on collateral estoppel and res judicata grounds was error, as the interests of the mother and children were not "substantially identical," and the children could not be faulted for the mother's failure to cooperate with the genetic testing. Miss. Dep't of Human Servs. ex rel. Allen v. Sanford, 850 So. 2d 86 (Miss. 2003).

Department of Public Welfare has authority to sue to enforce support of indigent children by action against non-supporting parent, because Department of Public Welfare is subrogated to rights of custodial parent against non-supporting parent. Statute provides that by accepting public assistance, parent is deemed to have assigned to Department of Public Welfare any right she may have to child support from other parent. Hull v. State Dep't of Pub. Welfare, 515 So. 2d 1205 (Miss. 1987).

Mississippi Code § 93-9-9 combined with Mississippi Code § 43-19-35 grant the Department of Public Welfare the right to petition the chancery court to have the paternity of a child born out of wedlock determined, and the departments right is independent of the mother's which is limited by the first indicated statute to one year from the birth of the child. Minor v. State Dep't of Pub. Welfare, 486 So. 2d 1253 (Miss. 1986).

Reimbursement for welfare expenditures for children receiving aid to dependent children is permitted under § 43-19-35. Hailey v. Holden, 457 So. 2d 947 (Miss. 1984).

Under the terms of § 91-1-15, the Department of Welfare, which had the authority under §§ 43-19-31 and 43-19-35 to institute paternity proceedings to obtain repayment for support of a dependant child under the Aid to Dependent Children program (ADC) from the person legally obligated to pay that support, would be held to a standard of proof by preponderance of the evidence where the proceeding was brought prior to the death of the putative father, rather than the standard of clear and convincing evidence that applies to an adjudication after the death of the father to establish heirship. Ivy v. State Dep't of Pub. Welfare, 449 So. 2d 779 (Miss. 1984).

ATTORNEY GENERAL OPINIONS

Section 43-19-35 includes in class of persons for whom there no attorney-client relationship, any and all recipients of child support services, irrespective of their public assistance status, pursuant to Title IV-D of Federal Social Security Act. Phillips Aug. 20, 1993, A.G. Op. #93-0564.

Since Child Support Unit is mandated by Section 43-19-31 (c) and (d) to initiate child support actions and to collect child support for non-AFDC recipients, and since Section 43-19-35 (3) mandates that any attorney initiating legal proceedings under Section 43-19-31 represents Department of Human Services exclusively with no attorney-client relationship existing between recipient of services and attorney, then there is no attorney-client relationship with recipients of either AFDC or non-AFDC services. Phillips Aug. 20, 1993, A.G. Op. #93-0564.

§ 43-19-37. Court orders of support to direct payment of support, attorney's fees and court costs to child support unit and not recipient.

(1) Court orders of support in all cases brought under the provisions of Sections 43-19-31 through 43-19-53 shall specify that the payment of court costs shall be directed by the absent parent to the Mississippi Department of Human Services Central Receipting and Disbursement Unit for further disbursement in the manner as prescribed by Title IV-D of the federal Social Security Act. The court shall assess attorney's fees to recover the costs associated with preparing and prosecuting the case, which shall be paid directly to the Mississippi Department of Human Services solely for the support of the legal division of the Child Support Unit, in a manner separate and distinct from the payment of child support. The court may allow the defendant to pay the attorney's fee over a period not to exceed four (4) months.

The state portion of attorney's fees paid into the department shall be used to match federal funds for the support of the legal division of the Child Support Unit, in conjunction with the Office of Attorney General. Any payments made by the absent parent directly to the recipient or applicant in violation of the court order shall not be deemed to be a support payment or an attorney's fee and shall not be credited to the court-ordered obligation of said absent parent or to the court-ordered obligation for the payment of the attorney's fee. Failure of the absent parent to comply with an order of support or for payment of an attorney's fee for a period of thirty (30) days shall be directed to the court having jurisdiction of the matter for contempt proceedings or execution issued in the manner and form prescribed by statute. Should civil proceedings become ineffective in producing support or attorney's fees in any case involving a legitimate child or a child wherein paternity has been established by law or acknowledged in writing, the case shall promptly be referred to the district attorney for prosecution as a violation of Section 97-5-3.

(2) Each application, petition, order or filing made under this section shall include the social security number(s) of the applicant or father, mother and child(ren), as applicable, in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1976, ch. 483, § 4; Laws, 1983, ch. 393, § 4; Laws, 1989, ch. 440, § 2; Laws, 1997, ch. 588, § 3; Laws, 2003, ch. 514, § 3, eff from and after passage (approved Apr. 19, 2003.)

Editor's Note — Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Court order of support for any child of recipient accepting public assistance, see § 43-19-35.

Federal Aspects — Title IV-D of the federal Social Security Act, see 42 USCS §§ 651 et seq.

RESEARCH REFERENCES

ALR. Validity of statute allowing attorneys' fees to successful claimant but not to defendant, or vice versa. 73 A.L.R.3d 515.

Right to attorney's fees in proceeding, after absolute divorce, for modification of child custody or support order. 57 A.L.R.4th 710.

Alimony or child-support awards as subject to attorneys' fees. 49 A.L.R.5th 595.

Enforcement of claim for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

§ 43-19-39. Distribution of child support payments; suits by child support unit; citation of noncooperating recipient parent; withholding payments for reimbursement of erroneous past payments.

(1) All child support payments collected by the child support unit pursuant to Section 43-19-35 shall be distributed in the manner as prescribed by the

federal Social Security Act and any amendments adopted thereto. Nothing contained herein shall preclude the child support unit in processing a paternity or support action for and on behalf of a child or children receiving aid to dependent children grants wherein the applicant or recipient has refused cooperation. If a parent of any child receiving public assistance fails or refuses to cooperate with the local county department or child support unit in locating and securing support from the nonsupporting responsible parent, this parent may be cited to appear before the judge of any court having jurisdiction over such matter and compelled to disclose such information under oath. Any parent who, having been cited to appear before a judge of the court having jurisdiction over such matter, fails or refuses to appear or fails or refuses to provide the information requested may be found to be in contempt of said court and may be fined not more than One Hundred Dollars ($100.00) or imprisoned not more than six (6) months or both.

(2) In a manner which is consistent with the federal Social Security Act, any amendments thereto and its implementing regulations, the child support unit is hereby authorized to withhold from distribution any payment or portion thereof which it may receive on behalf of a child or children for whom it is providing services if reimbursement is needed for any payments which may have been mistakenly or erroneously advanced on behalf of that child or children. The child support unit shall adopt policies that minimize any hardship that is caused by withholding from distribution any current support payments to reimburse past mistaken or erroneous advancements.

SOURCES: Laws, 1976, ch. 483, § 5; Laws, 1996, ch. 498, § 1, eff from and after July 1, 1996.

Editor's Note — The aid to dependent children program referenced in this section is now known as Temporary Assistance to Needy Families (TANF). For sections relating to Temporary Assistance to Needy Families, see Section 43-17-1 et seq.

Cross References — Social Security Act generally see 42 USCS §§ 301 et seq.

JUDICIAL DECISIONS

1. Distribution of child support payments.

Any distribution of child support collected under § 43-19-35 must be distributed in compliance with the federal Social Security Act and, therefore, the Department of Human Services may not retain, and must pay to the custodial parent, any child support collected in excess of the amount paid in assistance to the custodial parent. Brown v. Miss. Dep't of Human Servs., 806 So. 2d 1004 (Miss. 2000).

RESEARCH REFERENCES

ALR. Enforcement of claim for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

§ 43-19-41. Effect of applicant's or recipient's refusal to assist in finding absent parent or in securing support or establishing paternity.

Any applicant or recipient who refuses to provide reasonable assistance to the local county department or to the child support unit established by the state department of public welfare in identifying and locating the absent parent of a dependent child or otherwise refuses to cooperate with the department in securing support or in establishing paternity shall be ineligible for aid to dependent children, shall not be considered a needy relative and shall not be entitled to receive or use any part of the aid in grant nor shall be eligible for medical assistance under the Mississippi Medical Assistance Act; provided, however, that aid for the support of the child of such applicant or recipient shall not be denied or terminated as a result of such refusal to provide assistance or cooperation, but that the department may provide aid to said child in the form of protective vendor payments.

SOURCES: Laws, 1976, ch. 483, § 6, eff from and after July 1, 1976.

Editor's Note — The aid to dependent children program referenced in this section is now known as Temporary Assistance to Needy Families (TANF). For sections relating to Temporary Assistance to Needy Families, see Section 43-17-1 et seq.

Cross References — Provisions of the Mississippi Medical Assistance Act, see §§ 43-13-101 et seq.

Aid to dependent children, now Temporary Assistance to Needy Families, see §§ 43-17-1 et seq.

§ 43-19-43. Husband-wife privilege; self-incriminating testimony.

The mother or father are competent to testify at the trial against the other as provided in Section 13-1-5 subject to the provisions of the Mississippi Rules of Evidence governing the husband-wife privilege. If a parent called for examination declines to answer upon the grounds that his testimony may incriminate him, the court may require him to answer, in which event he shall not thereafter be prosecuted for any criminal acts involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in his testimony.

SOURCES: Laws, 1976, ch. 483, § 7; Laws, 1991, ch. 573, § 110, eff from and after July 1, 1991.

Cross References — Competency of husband and wife generally, see § 13-1-5.

Testimony by spouses in proceedings for protection from domestic abuse, see § 93-21-19.

§ 43-19-44. Safeguarding of personal data where evidence of risk of harm; definitions; petition for release of information.

For purposes of this section, an "authorized person" shall mean:

(a) Any agent or attorney of any state having in effect a plan approved under federal law, who has the duty or authority under such plan to seek to recover any amounts owed as child and spousal support (including, when authorized under the state plan, any official of a political subdivision);

(b) The court which has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent of the support and maintenance of a child, or any agent of such court;

(c) The resident parent, legal guardian, attorney or agent of a child (other than a child receiving federal assistance as determined by federal regulation) without regard to the existence of a court order against a noncustodial parent who has a duty to support and maintain any such child;

(d) A state agency that is administering a program operated under a state plan approved under federal law;

(e) Any agent or attorney of any state having an agreement under this section, who has the duty or authority under the law of such state to enforce a child custody or visitation determination;

(f) Any court having jurisdiction to make or enforce such a child custody or visitation determination, or any agent of such court; and

(g) Any agent or attorney of the United States, or of a state having an agreement under this section, who has the duty or authority to investigate, enforce or bring a prosecution with respect to the unlawful taking or restraint of a child.

The department shall safeguard personal data if the department is provided with reasonable evidence of a risk of harm. A state agency, court, department of another state, obligor, obligee and such other persons or entities as the department may specify may provide the department with reasonable evidence of a risk of harm in such manner as the department may require. The department shall not be required to safeguard personal data in intrastate cases for longer than one (1) year unless the department is provided with reasonable evidence of a continued risk of harm in such manner as the department may require. The department shall notify individuals whose personal data is safeguarded under this section that in order for the safeguards to remain in effect, such individuals must provide the department annually with reasonable evidence of a continued risk of harm. For the purposes of this section "reasonable evidence of a risk of harm" shall mean reasonable evidence that the release of information may result in physical harm to the parent or child, that the release of information may result in emotional harm to the parent or child which would significantly reduce the parent's capacity to care for the child, or would significantly reduce the parent or child's ability to function adequately, or that a protective order or restraining order has been issued on behalf of the parent or child.

If the department is provided with reasonable evidence of a risk of harm, the department, its employees and its contractors shall not disclose any personal data that could otherwise be disclosed about the location of a parent or child, including residential address, telephone number and name, address and telephone number of employer, and shall not disclose the Social Security number of a parent or child; provided, however, that such personal data may be shared by and between employees of the department and its contractors; provided further, that the department may disclose such personal data to the Federal Parent Locator Service, to the court, or agent of a court that is authorized to receive information from the Federal Parent Locator Service established pursuant to Title IV-D of the Social Security Act.

Provided further, that the department may disclose the Social Security number of a child receiving IV-D services for the purposes directly connected to obtaining health care coverage for such child to an employer or provider of health care coverage.

If the department is provided with reasonable evidence of a risk of harm pursuant to this section, the department shall notify the Federal Parent Locator Service established pursuant to Title IV-D of the Social Security Act that a risk of harm exists. Upon order of the court in an intrastate matter the department shall release personal data, which may include location information and Social Security numbers, to such court or agent, as required by said Title IV-D of the Social Security Act; provided, however, that if the department has been provided with reasonable evidence of a risk of harm, the department shall notify the court or agent that the department has received such information; before making any disclosure of such personal data, the court is required to determine whether such disclosure to any other person could be harmful to the parent or child. A person or agency seeking disclosure of personal data which the department is prohibited from disclosing because of a risk of harm, but which could otherwise be disclosed, may file a petition with the chancery court to request disclosure of such personal data.

Upon an order by the court in interstate cases to override nondisclosure procedures in cases dealing with domestic violence, the court shall order the department to release this information within thirty (30) days of the order. Whereupon, the department shall transmit said court order to the Federal Office of Child Support Enforcement (OCSE), Federal Parent Locator Service (FPLS), whereby OCSE will notify the department of its decision to remove the nondisclosure code. Upon notification from OCSE, the department shall release said information unto the court.

Any unauthorized disclosure or unauthorized willful inspection made in a good faith effort to comply with this section shall not be considered a violation of this section.

A person or agency, including the department, seeking personal data which the department is prohibited from disclosing because of a risk of harm, but which could otherwise be disclosed or which the Federal Parent Locator Service established pursuant to Title IV-D of the Social Security Act is prohibited from disclosing because the Secretary of the Federal Department of Health and Human Services has been notified that there is a reasonable evidence of domestic violence or child abuse, may file a petition with the court where the person resides to request disclosure of such personal data. The petition shall specify the purpose for which such personal data is required. When a petition is filed, or when the court receives notice from the department that the department has been notified of a risk of harm, the court shall determine whether disclosure of personal data could be harmful to the parent or child before releasing such data to any other person or agency. In making such determination, the court shall notify the parent that the court has received a request to release personal data and shall provide a specific date by which the parent must object to release of the information and provide the basis for objection. The parent may provide such information in writing and shall not be required to appear in person to contest the release of information. The court shall also notify the department of any petition filed pursuant to this section and the department shall release to the court any information which it has been provided regarding the risk of harm; however, the department shall not be made a party to the action. Further, the attorney for the Department of Human Services, in any proceeding herein, shall not be deemed to be appearing in a representative capacity for any party. The court may also request information directly from the Federal Parent Locator Service from the department of another state, and from any other source.

In determining whether disclosure of personal data could be harmful to the parent or child, the court shall consider any relevant information provided by the parent or child, any information provided by the department or by the department of another state, and any evidence provided by the person seeking the personal data. Documentary evidence transmitted to the court by facsimile, telecopier or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission. The court may permit a party or witness to be deposed or to testify by telephone, audiovisual means, or other electronic means.

The court may enter an order (1) impounding the personal data and prohibiting any disclosure by the court or its agents, (2) permitting disclosure by the court or its agents to a specific person or persons, or (3) removing any restrictions on disclosure by the court and its agents. An order permitting disclosure of personal data may specify the purposes for which the data may be used and may prohibit a person to whom the data is disclosed from making further disclosures to any other person. The court shall notify the department of any order entered pursuant to this section. Any person or agency who violates an order issued pursuant to this section may be held in contempt of court and subject to the penalties provided herein.

The court may disclose location information about a parent for the limited purpose of notifying the parent of a proceeding under this section or of any other proceeding in court, provided that such information shall not be disclosed to another party unless the court issues an order pursuant to this section permitting such disclosure.

SOURCES: Laws, 1999, ch. 512, § 14, eff from and after July 1, 1999.

Federal Aspects — Title IV-D of the Social Security Act, see 42 USCS §§ 651 et seq.

§ 43-19-45. State parent locator service; cooperation of state agencies and the like with Child Support Unit; confidentiality of records; authority to request employment verification, address and social security number of absent or nonsupporting parent or alleged parent; confidentiality of records; penalties [Repealed effective July 1, 2019].

(1) The Child Support Unit shall establish a state parent locator service for the purpose of locating absent and nonsupporting parents and alleged parents, which will utilize all appropriate public and private locator sources. In order to carry out the responsibilities imposed under Sections 43-19-31 through 43-19-53, the Child Support Unit may secure, by administrative subpoena from the customer records of public utilities and cable television companies, the names and addresses of individuals and the names and addresses of employers of such individuals that would enable the location of parents or alleged parents who have a duty to provide support and maintenance for their children. The Child Support Unit may also administratively subpoena any and all financial information, including account numbers, names and social security numbers of record for assets, accounts, and account balances from any individual, financial institution, business or other entity, public or private, needed to establish, modify or enforce a support order. No entity complying with an administrative subpoena to supply the requested information of whatever nature shall be liable in any civil action or proceeding on account of such compliance. Full faith and credit shall be given to all uniform administrative subpoenas issued by other state child support units. The recipient of an administrative subpoena shall supply the Child Support Unit, other state and federal IV-D agencies, its attorneys, investigators, probation officers, county or district attorneys in this state, all information relative to the location, employment, employment-related benefits including, but not limited to, availability of medical insurance, income and property of such parents and alleged parents and with all information on hand relative to the location and prosecution of any person who has, by means of a false statement or misrepresentation or by impersonation or other fraudulent device, obtained Temporary Assistance for Needy Families (TANF) to which he or she was not entitled, notwithstanding any provision of law making such information confidential. The Mississippi Department of Information Technology Services and any other agency in this state using the facilities of the Mississippi Department of Information Technology Services are directed to permit the Child Support Unit access to their files, inclusive of those maintained for other state agencies, for the purpose of locating absent and nonsupporting parents and alleged parents, except to the extent that any such access would violate any valid federal statute or regulation issued pursuant thereto. The Child Support Unit, other state and federal IV-D agencies, its attorneys, investigators, probation officers, or county or district attorneys, shall use such information only for the purpose of investigating or enforcing the support liability of such absent parents or alleged parents or for the

prosecution of other persons mentioned herein. Neither the Child Support Unit nor those authorities shall use the information, or disclose it, for any other purpose. All records maintained pursuant to the provisions of Sections 43-19-31 through 43-19-53 shall be confidential and shall be available only to the Child Support Unit, other state and federal IV-D agencies, the attorneys, investigators and other staff employed or under contract under Sections 43-19-31 through 43-19-53, district or county attorneys, probation departments, child support units in other states, and courts having jurisdiction in paternity, support or abandonment proceedings. The Child Support Unit may release to the public the name, photo, last-known address, arrearage amount and other necessary information of a parent who has a judgment against him for child support and is currently in arrears in the payment of this support. Such release may be included in a "Most Wanted List" or other media in order to solicit assistance.

(2) The Child Support Unit shall have the authority to secure information from the records of the Mississippi Department of Employment Security that may be necessary to locate absent and nonsupporting parents and alleged parents under the provisions of Sections 43-19-31 through 43-19-53. Upon request of the Child Support Unit, all departments, boards, bureaus and agencies of the state shall provide to the Child Support Unit verification of employment or payment and the address and social security number of any person designated as an absent or nonsupporting parent or alleged parent. In addition, upon request of the Child Support Unit, the Mississippi Department of Employment Security, or any private employer or payor of any income to a person designated as an absent or nonsupporting parent or alleged parent, shall provide to the Child Support Unit verification of employment or payment and the address and social security number of the person so designated. Full faith and credit shall be given to such notices issued by child support units in other states. All such records and information shall be confidential and shall not be used for any purposes other than those specified by Sections 43-19-31 through 43-19-53. The violation of the provisions of this subsection shall be unlawful and any person convicted of violating the provisions of this subsection shall be guilty of a misdemeanor and shall pay a fine of not more than Two Hundred Dollars ($200.00).

(3) Federal and state IV-D agencies shall have access to the state parent locator service and any system used by the Child Support Unit to locate an individual for purposes relating to motor vehicles or law enforcement. No employer or other source of income who complies with this section shall be liable in any civil action or proceeding brought by the obligor or obligee on account of such compliance.

SOURCES: Laws, 1976, ch. 483, § 8; Laws, 1988, ch. 345; Laws, 1990, ch. 543, § 1; Laws, 1993, ch. 333, § 1; Laws, 1993, ch. 525, § 1; Laws, 1997, ch. 588, § 13; Laws, 2000, ch. 530, § 2; Laws, 2004, ch. 572, § 50; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 50; reenacted without change, Laws, 2010, ch. 559, § 50; reenacted without change, Laws, 2011, ch. 471,

§ 51; reenacted and amended, Laws, 2012, ch. 515, § 51, eff from and after July 1, 2012.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

Law of 1997, ch. 588, §§ 149, 150 provide as follows:

"SECTION 149. The Department of Human Services shall undertake to study, analyze, and report to the Legislature not later than January 1, 1998, the anticipated cost to the department should a reasonable fee be assessed to reimburse utility companies, cable television companies and financial institutions their actual cost in complying with requests for information concerning the location of any parent owing child support or the location of any assets belonging to any parent owing child support pursuant to the terms of this act.

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Temporary Assistance to Needy Families, see §§ 43-17-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects — Title IV-D of the Social Security Act appears as 42 USCS §§ 651 et seq.

ATTORNEY GENERAL OPINIONS

Salary information on a public employee, whether or not his location is known, and any information held by an agency of the state which would help locate a missing parent must be disclosed to the Child Support Unit. Hathorn, May 14, 1992, A.G. Op. #92-0324.

§ 43-19-46. Report by employer to Directory of New Hires [Repealed effective July 1, 2019].

(1) Each employer paying wages, salary or commission and doing business in Mississippi shall report to the Directory of New Hires within the Mississippi Department of Human Services:

(a) The hiring of any person who resides or works in this state to whom the employer anticipates paying wages, salary or commission; and

(b) The hiring or return to work of any employee who was laid off, furloughed, separated, granted leave without pay or was terminated from employment.

(2) Employers shall report, by mailing or by other means authorized by the Department of Human Services, a copy of the employee's W-4 form or its equivalent that will result in timely reporting. Each employer shall submit reports within fifteen (15) days of the hiring, rehiring or return to work of the employee. The report shall contain:

(a) The employee's name, address, social security number and the date of birth;

(b) The employer's name, address, and federal and state withholding tax identification numbers; and

(c) The date upon which the employee began or resumed employment, or is scheduled to begin or otherwise resume employment.

(3) The department shall retain the information, which shall be forwarded to the federal registry of new hires.

(4) The Department of Human Services may operate the program, may enter into a mutual agreement with the Mississippi Department of Employment Security or the Department of Revenue, or both, for the operation of the Directory of New Hires Program, or the Department of Human Services may contract for that service, in which case the department shall maintain administrative control of the program.

(5) In cases in which an employer fails to report information, as required by this section, an administratively levied civil penalty in an amount not to exceed Five Hundred Dollars ($500.00) shall apply if the failure is the result of a conspiracy between the employer and employee to not supply the required report or to supply a false or incomplete report. The penalty shall otherwise not exceed Twenty-five Dollars ($25.00). Appeal shall be as provided in Section 43-19-58.

SOURCES: Laws, 1997, ch. 588, § 4; Laws, 2004, ch. 572, § 51; Laws, 2007, ch. 336, § 1; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 51; Laws, 2011, ch. 471, § 52; Laws, 2011, ch. 530, § 9, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 52 of ch. 471, Laws of 2011, effective from and after July 1, 2011 (approved March 30, 2011), amended this section. Section 9 of ch. 530, Laws of 2011, effective from and after July 1, 2011 (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 9 of ch. 530, Laws of 2011, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Laws of 2004, ch. 572, § 60, as amended by laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58 provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

§ 43-19-47. Employment by child support unit of staff attorneys.

(1) The Child Support Unit of the State Department of Human Services, in cooperation with the Attorney General, may appoint at least one (1) full-time staff attorney in or for each chancery court district for the purpose of initiating proceedings under the provisions of Sections 43-19-31 through 43-19-53 in securing child support and establishing paternity. The annual salary of each of the attorneys appointed by the Child Support Unit, in cooperation with the

Attorney General's office under the provisions of Sections 43-19-31 through 43-19-53, shall be fixed at such sums as may be deemed proper in accordance with the salaries of other full-time employed state attorneys with the Attorney General's Office. Such salaries, inclusive of all reimbursable travel and other expenses, inclusive of financial arrangements perfected with the appropriate courts, the law enforcement officials and the district attorneys, shall be paid monthly from the funds appropriated to the Child Support Unit of the State Department of Human Services and from the special fund for the Division of Child Support in which the interest from its accounts and all attorney's fees and other fees is placed. The Mississippi Personnel Board shall survey the salaries of other Mississippi attorneys with the Attorney General's Office each year and shall raise the start step of the staff and senior attorneys accordingly and the minimum shall never go below Forty Thousand Dollars ($40,000.00) for staff attorneys or Fifty Thousand Dollars ($50,000.00) for senior attorneys.

(2) To assist in the implementation of the provisions of Sections 43-19-31 through 43-19-53, the Executive Director of the Department of Human Services is empowered to enter into cooperative agreements with district attorneys, county attorneys and attorneys employed by the county boards of supervisors, in conjunction with the Office of Attorney General. Said cooperative agreements shall be made in compliance with the regulations established by the Secretary of the Department of Health and Human Services, and may be funded either by funds appropriated to the Child Support Unit of the State Department of Human Services or funds appropriated by any county board of supervisors in this state for their respective county. Attorneys may be hired contractually to be paid in amounts commensurate with the department's staff attorneys.

SOURCES: Laws, 1976, ch. 483, § 9; Laws, 1983, ch. 393, § 5; Laws, 2003, ch. 514, § 4, eff from and after passage (approved Apr. 19, 2003.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence of (1) by substituting "The annual salary of each of the attorneys" for "The qualifications and annual salary of each of the attorneys" at the beginning. The Joint Committee ratified the correction at its July 22, 2010, meeting.

JUDICIAL DECISIONS

1. Eleventh Amendment bar.

In a case in which a former state attorney sought a declaration that Mississippi officials had violated the federal Due Process and Equal Protection Clauses and Miss. Code Ann. § 43-19-47, the Ex Parte Young exception to Eleventh Amendment immunity did not apply. Since the attorney was no longer employed by the state, he could not seek prospective relief. Chayer v. Barbour, 560 F. Supp. 2d 490 (S.D. Miss. May 9, 2008).

In a case in which a former state attorney sought a declaration that Mississippi officials had violated the federal Due Process and Equal Protection Clauses and Miss. Code Ann. § 43-19-47, the Eleventh Amendment barred his claims. The claims had been brought against the officials in their official capacities only. Chayer v.

Barbour, 560 F. Supp. 2d 490 (S.D. Miss. May 9, 2008).

ATTORNEY GENERAL OPINIONS

Statute does not prohibit attorneys employed by Department of Human Services from engaging in private practice. Hathorn, March 20, 1992, A.G. Op. #92-0147.

§ 43-19-48. Use of data match systems by Department of Human Services for noncustodial parents delinquent in child support payments.

(1) The Department of Human Services and financial institutions doing business in the state are required to enter into agreements:

(a) To develop and operate a data match system, using automated data exchanges, in which each such financial institution is required to provide for each calendar quarter the name, record address, Social Security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the Department of Human Services by name and Social Security number or other taxpayer identification number;

(b) To encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien; and

(c) To provide for payment of reasonable fees to financial institutions for conducting data matches, and for responding to other requests made pursuant to this section, with such fees not to exceed the actual costs incurred by such financial institutions.

(2) When the operation of such data match system results in the location of an account of a noncustodial parent who owes past-due support, or when such account is located through any means, the department may request and shall receive additional financial or other information including account numbers, names and Social Security numbers on record for accounts, and account balances, from any financial institution needed to establish, modify or enforce a support order.

(3) The department shall have the authority to encumber and seize assets held by an obligor in a financial institution doing business in Mississippi. Such assets shall be encumbered for either:

(a) A forty-five-day period; or

(b) Until such time as the issue of overdue support is resolved, provided the obligor has filed a petition for hearing with a court of appropriate jurisdiction and the financial institution receives written notice thereof from the department before the end of the said forty-five-day period.

(4) Notice of such encumbrance initiated by the department shall be provided to the financial institution and to the obligor:

(a) The department shall send, by certified mail, notice to the financial institution with which the account is placed, directing that the financial institution shall:

(i) Immediately encumber funds in any account(s) in which the obligor has an interest, and to the extent of the debt indicated in the notice from the department;

(ii) Forward the encumbered funds to the department after either the forty-five-day period stated in subsection 3(a) of this section, or a determination favorable to the department by a court of appropriate jurisdiction; or

(iii) In the event the obligor prevails before the court, immediately release said funds to the obligor.

(b) Notice shall be delivered to the obligor at the current mailing address as recorded by the department. Such notice shall be sent by regular mail at the commencement of the action described herein.

(c) The financial institution shall not disclose to an account holder or the depositor that the name of such person has been received from or furnished to the department. The financial institution shall disclose to its account holders or its depositors that under the data match system the department has the authority to request certain identifying information on the account holders' or the depositor's accounts.

(5) Challenges to encumbrance of an account:

(a) Challenges to such levy for child support arrearage may be initiated only by the obligor or by an account holder of interest.

(b) Challenges shall be made by the filing of a petition for hearing by the obligor in a court of appropriate jurisdiction under Rule 81(d)(2) of the Mississippi Rules of Civil Procedure. Service upon the department shall be as prescribed by Rule 4(d)(5) of the Mississippi Rules of Civil Procedure.

(c) Grounds for the petition challenging the encumbrance shall be limited to:

(i) Mistakes of identity; or

(ii) Mistakes in amount of overdue support.

(6) Liability of the financial institution and the department:

(a) Neither the department nor the financial institution shall be liable for any applicable early withdrawal penalties on the obligor's account(s).

(b) A financial institution shall be absolutely immune from any civil liability under any law or regulation to any person for the disclosure of or failure to disclose any information pursuant to this chapter or for the escrow, encumbrance, seizure or surrender of any assets held by the financial institution in response to any notice issued by the Department of Human Services, the Child Support Unit or any contractors or agents thereof unless the disclosure or failure to disclose was willful or intentional, or for any other action taken in good faith to comply with the requirements of this chapter.

(7) Any amount encumbered and forwarded by the financial institution under this section shall not exceed the arrearage owed by the obligor.

(8) The provisions herein and any other relevant sections shall be employed equally by authorized contractors of the department to collect delinquent support payments.

(9) A financial institution shall not be liable under federal or state law to any person:

(a) For any disclosure of information to the Department of Human Services;

(b) For encumbering or forwarding any assets held by such financial institution in response to a notice of lien or levy;

(c) For any other action taken in good faith to comply with the requirements of subsection (1)(a) or (b) above.

(10) Definitions. For purposes of this section:

(a) The term "financial institution" has the meaning given to such by Section 81-12-3, Mississippi Code of 1972, and shall include, but not be limited to, credit unions, stock brokerages, public or private entities administering retirement, savings, annuities, life insurance and/or pension funds;

(b) The term "account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account or money-market mutual fund account.

(11) Failure to comply with the provisions of this section or the willful rendering of false information shall subject the financial institution to a fine of not less than One Thousand Dollars ($1,000.00).

SOURCES: Laws, 1997, ch. 588, § 137, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 588, § 150 provide as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

JUDICIAL DECISIONS

1. Challenge to encumbrance.

"Mistake of identity" language in Miss. Code Ann. § 43-19-48(5) did not apply to an obligee spouse, and the obligee spouse was not restricted to filing under the 45 day deadline in Miss. Code Ann. § 43-19-48, when an encumbrance was placed on joint accounts which the obligee spouse owned with the estranged obligor spouse when the obligor spouse owed child support. However, a letter to the Mississippi Department of Human Services by the obligee spouse's attorney was not the equivalent to a sworn declaration filed according to Miss. Code Ann. § 43-19-48, as it was too little, too late. Miss. Dep't of Human Servs. v. Lang, 114 So. 3d 748 (Miss. Ct. App. 2013).

RESEARCH REFERENCES

ALR. Enforcement of claim for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

§ 43-19-49. Employment by child support unit of investigative, technical, secretarial and supportive staff.

There is hereby authorized to be employed by the child support unit of the state department of public welfare such other, investigative, technical, secretarial and supportive staff as may be necessary for the proper and necessary implementation of the requirements of Public Law 93-647, 93rd Congress, and any amendments adopted thereto applicable to said program as provided under Sections 43-19-31 through 43-19-53; said positions shall be subject to the merit system's rules and regulations and their salaries shall be fixed in such amounts as the state department of public welfare may deem proper.

SOURCES: Laws, 1976, ch. 483, § 10, eff from and after July 1, 1976.

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 99-19-73.

§ 43-19-51. Duties, powers and functions of Attorney General's office, district attorneys and county attorneys unaffected.

Nothing contained in Sections 43-19-31 through 43-19-53 shall be construed as relieving or diminishing any of the duties, powers and functions of the Attorney General's office, district attorneys or county attorneys under the statutes of this state relating to the collection of any judgment or debt in favor of the state or the enforcement of the criminal laws under Sections 43-19-31 through 43-19-53 or any other provisions of state law.

SOURCES: Laws, 1976, ch. 483, § 11, eff from and after July 1, 1976.

§ 43-19-53. Annual report.

Not later than sixty (60) days after the first day of January of each year, the state department of public welfare shall cause to be published for the preceding calendar year a detailed report showing the total number of cases in the aid to dependent children program reported on the basis of fraud or suspected fraud, the total number investigated, prosecuted and disposed of civilly and/or criminally in each county of the state and the total number of support and paternity cases reported, investigated, continued, prosecuted civilly, and the total amount of support collected.

SOURCES: Laws, 1976, ch. 483, § 12, eff from and after July 1, 1976.

Editor's Note — The aid to dependent children program referenced in this section is now known as Temporary Assistance to Needy Families (TANF). For sections relating to Temporary Assistance to Needy Families, see Section 43-17-1 et seq.

Cross References — Aid to Dependent Children Program, now Temporary Assistance to Needy Families, see §§ 43-17-1 et seq.

State Department of Public Welfare as meaning Department of Human Services, see § 99-19-73.

§ 43-19-55. Authorization to manage bank accounts for funds received as incentives from federal government and as income tax offsets.

The State Department of Human Services shall be authorized in maintaining separate accounts with Mississippi banks to handle funds received as incentives from the federal government earned as a result of collecting support and also any funds maintained on deposit as a result of federal and state income tax offsets and any other relevant account, and to aggressively manage the float in these accounts so as to accrue maximum interest advantage of the funds in the account, and to retain all earned interest on these funds to be applied to defray the expenses of the Child Support Unit.

SOURCES: Laws, 1987, ch. 323; Laws, 2003, ch. 514, § 5, eff from and after passage (approved Apr. 19, 2003.)

§ 43-19-57. Administrative subpoenas.

(1) Any administrative subpoena issued by the Department of Human Services pursuant to the provisions of Laws, 1997, Chapter 588, shall be directed to the appropriate party or entity and signed by the Director of the Department of Human Services or his designee.

(2) A person wishing to appeal the issuance of an administrative subpoena shall have recourse to the chancery courts as for any subpoena.

SOURCES: Laws, 1997, ch. 588, § 147, eff from and after July 1, 1997.

Editor's Note — Chapter 588 of laws of 1997, referenced in subsection (1) of this section, enacted §§ 43-19-46, 43-19-48, 43-19-57, 43-19-58, 71-3-129, 93-11-64, 93-11-118, and 93-25-1 through 93-25-117, amended §§ 11-33-9, 27-7-83, 27-15-203, 37-9-9, 41-4-7, 41-19-33, 41-21-87, 41-57-7, 43-13-117, 43-13-303, 43-19-31, 43-19-35, 43-19-37, 49-7-3, 63-1-19, 63-1-81, 67-1-53, 67-3-17, 73-1-17, 73-2-7, 73-3-2, 73-4-17, 73-5-15, 73-6-15, 73-7-13 through 73-13-19, 73-13-21, 73-9-23, 73-10-9, 73-11-51, 73-13-25, 73-14-17, 73-15-19, 73-15-21, 73-17-11, 73-19-19, 73-21-85 through 73-21-91, 73-23-47, 73-24-19, 73-25-5, 73-27-5, 73-29-15, 73-30-9, 73-31-13, 73-33-5, 73-34-13, 73-35-9, 73-36-23, 73-38-19, 73-39-15 [repealed], 73-41-5 [repealed], 73-53-13, 73-55-7, 73-57-17, 73-59-5, 81-5-55, 83-17-107 [repealed], 83-17-205 [repealed], 83-18-3, 83-39-5, 93-9-9, 93-9-15, 93-9-17, 93-9-21, 93-9-23, 93-11-69, 93-11-71, 93-11-101, 93-11-103, 93-11-111 through 93-11-115, and 93-11-117, and repealed §§ 41-4-15, 93-11-1 through 93-11-63, 93-11-105 through 93-11-109, 93-12-1 through 93-12-15, and 93-12-21.

Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Authority of Child Support Unit to issue administrative subpoenas, see § 43-19-45.

§ 43-19-58. Appeals process for imposition of civil penalties.

(1) Persons wishing to contest the imposition of an administrative civil penalty under the provisions of Laws, 1997, Chapter 588, shall be entitled to

a hearing before the Director of the Department of Human Services or his designee by so requesting within twenty (20) days after receiving notice of the imposition of the administratively imposed civil penalty. The request shall identify the civil penalty contested and legibly state the contestant's name, mailing address and home and daytime phone numbers. The date, time and place for the hearing shall be made as convenient as possible for the contestant, who shall receive notice thereof not less than seven (7) days before the hearing. A hearing on whether to impose a civil penalty and to consider circumstances in mitigation shall be held on the time and the place specified in the notice. The contestant may appear in person, through his attorney or, prior to the date set for the hearing, submit written testimony and other evidence, subject to the penalty for false swearing, for entry in the hearing record.

(2) After the hearing, the director or his designee shall issue his order, which may be appealed to the chancery court of the county in which the contestant resides in the same manner as is provided by law for appeals originating from county courts.

(3) The director or his designee may file the order assessing the penalty, or a certified copy of the order, with the clerk of any chancery court in the state after expiration of the time in which an appeal may be taken, or final determination of the matter on appeal, whereupon the order assessing the penalty shall be enrolled on the judgment roll and may be enforced in the same manner as a judgment.

SOURCES: Laws, 1997, ch. 588, § 148, eff from and after July 1, 1997.

Editor's Note — Chapter 588 of Laws of 1997, referenced in subsection (1) of this section enacted §§ 43-19-46, 43-19-48, 43-19-57, 43-19-58, 71-3-129, 93-11-64, 93-11-118, and 93-25-1 through 93-25-117, amended §§ 11-33-9, 27-7-83, 27-15-203, 37-9-9, 41-4-7, 41-19-33, 41-21-87, 41-57-7, 43-13-117, 43-13-303, 43-19-31, 43-19-35, 43-19-37, 49-7-3, 63-1-19, 63-1-81, 67-1-53, 67-3-17, 73-1-17, 73-2-7, 73-3-2, 73-4-17, 73-5-15, 73-6-15, 73-7-13 through 73-13-19, 73-13-21, 73-9-23, 73-10-9, 73-11-51, 73-13-25, 73-14-17, 73-15-19, 73-15-21, 73-17-11, 73-19-19, 73-21-85 through 73-21-91, 73-23-47, 73-24-19, 73-25-5, 73-27-5, 73-29-15, 73-30-9, 73-31-13, 73-33-5, 73-34-13, 73-35-9, 73-36-23, 73-38-19, 73-39-15 [repealed], 73-41-5 [repealed], 73-53-13, 73-55-7, 73-57-17, 73-59-5, 81-5-55, 83-17-107 [repealed], 83-17-205 [repealed], 83-18-3, 83-39-5, 93-9-9, 93-9-15, 93-9-17, 93-9-21, 93-9-23, 93-11-69, 93-11-71, 93-11-101, 93-11-103, 93-11-111 through 93-11-115, and 93-11-117, and repealed §§ 41-4-15, 93-11-1 through 93-11-63, 93-11-105 through 93-11-109, 93-12-1 through 93-12-15, and 93-12-21.

Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Authority of Child Support Unit to issue administrative subpoenas, see § 43-19-45.

§ 43-19-59. Child Support Unit to use high-volume automated administrative enforcement to enforce out-of-state support orders.

(1) The Department of Human Services, as the Title IV-D child support enforcement agency of this state, shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting state.

(2) In this section, "high-volume, automated administrative enforcement" means the use of automatic data processing to search various available state data bases, including, but not limited to, license records, employment service data, and state new hire registries, to determine whether information is available regarding a parent who owes a child support obligation.

(3) The department may, by electronic or other means, transmit to another state or receive from another state a request for assistance in enforcing support orders through high-volume, automated administrative enforcement, which request:

(a) Shall include such information as will enable the state to which the request is transmitted to compare the information about the cases to the information in the data bases of the state receiving the request; and

(b) Shall constitute a certification by the requesting state:

(i) Of the amount of support under an order the payment of which is in arrears; and

(ii) That the requesting state has complied with all procedural due process requirements applicable to each case.

(c) If the department provides assistance to another state with respect to a case, or if another state seeks assistance from the department pursuant to this section, neither state shall consider the case to be transferred to the caseload of such other state.

SOURCES: Laws, 1999, ch. 512, § 19, eff from and after July 1, 1999.

Federal Aspects — Title IV-D of the Social Security Act appears as 42 USCS §§ 651 et seq.

§ 43-19-61. Child Support Prosecution Trust Fund created; purpose.

There is created in the State Treasury a special trust fund to be designated as the "Child Support Prosecution Trust Fund." The fund shall be used by the Office of the Attorney General for the prosecution of delinquent child support cases and may also be used to draw down the sixty-six percent (66%) federal reimbursement IV-D funds for support of the Legal Division of the Child Support Unit of the Mississippi Department of Human Services.

SOURCES: Laws, 2005, 2nd Ex Sess, ch. 1, § 3 eff from and after July 1, 2005.

Federal Aspects — Title IV-D of the Social Security Act appears as 42 USCS §§ 651 et seq.

CHILD SUPPORT AWARD GUIDELINES

SEC.
43-19-101. Child support award guidelines.
43-19-103. Criteria for overcoming presumption that guidelines are appropriate.

§ 43-19-101. Child support award guidelines.

(1) The following child support award guidelines shall be a rebuttable presumption in all judicial or administrative proceedings regarding the awarding or modifying of child support awards in this state:

Number Of Children Due Support	Percentage Of Adjusted Gross Income That Should Be Awarded For Support
1	14%
2	20%
3	22%
4	24%
5 or more	26%

(2) The guidelines provided for in subsection (1) of this section apply unless the judicial or administrative body awarding or modifying the child support award makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103.

(3) The amount of "adjusted gross income" as that term is used in subsection (1) of this section shall be calculated as follows:

(a) Determine gross income from all potential sources that may reasonably be expected to be available to the absent parent including, but not limited to, the following: wages and salary income; income from self-employment; income from commissions; income from investments, including dividends, interest income and income on any trust account or property; absent parent's portion of any joint income of both parents; workers' compensation, disability, unemployment, annuity and retirement benefits, including an Individual Retirement Account (IRA); any other payments made by any person, private entity, federal or state government or any unit of local government; alimony; any income earned from an interest in or from inherited property; any other form of earned income; and gross income shall exclude any monetary benefits derived from a second household, such as income of the absent parent's current spouse;

(b) Subtract the following legally mandated deductions:

(i) Federal, state and local taxes. Contributions to the payment of taxes over and beyond the actual liability for the taxable year shall not be considered a mandatory deduction;

(ii) Social security contributions;

(iii) Retirement and disability contributions except any voluntary retirement and disability contributions;

(c) If the absent parent is subject to an existing court order for another child or children, subtract the amount of that court-ordered support;

(d) If the absent parent is also the parent of another child or other children residing with him, then the court may subtract an amount that it deems appropriate to account for the needs of said child or children;

(e) Compute the total annual amount of adjusted gross income based on paragraphs (a) through (d), then divide this amount by twelve (12) to obtain the monthly amount of adjusted gross income.

Upon conclusion of the calculation of paragraphs (a) through (e), multiply the monthly amount of adjusted gross income by the appropriate percentage designated in subsection (1) to arrive at the amount of the monthly child support award.

(4) In cases in which the adjusted gross income as defined in this section is more than One Hundred Thousand Dollars ($100,000.00) or less than Ten Thousand Dollars ($10,000.00), the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.

(5) The Department of Human Services shall review the appropriateness of these guidelines beginning January 1, 1994, and every four (4) years thereafter and report its findings to the Legislature no later than the first day of the regular legislative session of that year. The Legislature shall thereafter amend these guidelines when it finds that amendment is necessary to ensure that equitable support is being awarded in all cases involving the support of minor children.

(6) All orders involving support of minor children, as a matter of law, shall include reasonable medical support. Notice to the obligated parent's employer that medical support has been ordered shall be on a form as prescribed by the Department of Human Services. In any case in which the support of any child is involved, the court shall make the following findings either on the record or in the judgment:

(a) The availability to all parties of health insurance coverage for the child(ren);

(b) The cost of health insurance coverage to all parties.

The court shall then make appropriate provisions in the judgment for the provision of health insurance coverage for the child(ren) in the manner that is in the best interests of the child(ren). If the court requires the custodial parent to obtain the coverage then its cost shall be taken into account in establishing the child support award. If the court determines that health insurance coverage is not available to any party or that it is not available to either party at a cost that is reasonable as compared to the income of the parties, then the court shall make specific findings as to such either on the record or in the judgment. In that event, the court shall make appropriate provisions in the judgment for the payment of medical expenses of the child(ren) in the absence of health insurance coverage.

SOURCES: Laws, 1989, ch. 439, § 1; Laws, 1990, ch. 543, § 2; Laws, 2000, ch. 530, § 3; Laws, 2004, ch. 582, § 1; Laws, 2012, ch. 552, § 2; Laws, 2013, ch. 356, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (e) of subsection (3). The words "paragraphs (a) though (d)" were changed to "paragraphs (a) through (d)". The Joint Committee ratified the correction at its May 20, 1998, meeting.

Cross References — Department of Human Services, see §§ 43-1-1 et seq.

Criteria for overcoming the presumption that the guidelines provided in this section are appropriate and just, see § 43-19-103.

JUDICIAL DECISIONS

1. In general.
2. Applicability.
3. Guidelines; adherence to.
4. Guidelines; deviation from.
5. Findings of fact.
6. Needs of other children.
7. Modification of support.
8. Retroactivity of award.

1. In general.

Remand of a chancellor's award of child support for further proceedings was necessary because the chancellor's statement was not enough to satisfy the requirements of Miss. Code Ann. § 43-19-101(4) as the chancellor did not disclose the basis for the calculations. This required the chancellor to state whether the award was based on the statutory child-support guidelines and to discuss the reasonableness of the award. O'Brien v. O'Brien, — So. 3d —, 2014 Miss. App. LEXIS 69 (Miss. Ct. App. Feb. 11, 2014).

It was within a chancellor's discretion to find that a former spouse's adjusted gross income was not to be calculated based on an earning potential that the spouse, who was an emergency room physician, could only realize by working additional shifts at a hospital and thereby placing the spouse's patients in potential danger from the spouse's fatigue. Crittenden v. Crittenden, 129 So. 3d 947 (Miss. Ct. App. 2013).

Under Miss. Code Ann. § 43-19-101(3)(a), the father's workers' compensation benefits were income for child support assessment. Chapman v. Ward, 3 So. 3d 790 (Miss. Ct. App. 2008).

Award of $2,000 per month in child support was not reversed on appeal where the evidence showed that this was almost twenty percent of a father's income, and he could have earned more since he was a physician. Henderson v. Henderson, 952 So. 2d 273 (Miss. Ct. App. 2006), writ of certiorari denied by 951 So. 2d 563, 2007 Miss. LEXIS 165 (Miss. 2007).

As the original divorce agreement between the parents did not include a provision for child support, the chancellor was required to treat the mother's motion as an initial award of child support, and both parents were obligated to provide financially for their child; the father, as the non-custodial parent, had to provide his child with 14 percent of his adjusted gross income. Forrest v. McCoy, 941 So. 2d 889 (Miss. Ct. App. 2006).

Chancellor's findings were sufficient to support an award of 22 percent of the husband's reported adjusted gross income plus one-half of the children's parochial school tuition where the husband earned in excess of $50,000 per year when bonuses and cash income received from plumbing jobs were included, the order to pay $800 per month in child support was based only on the husband's reported income from his business, the children had always attended parochial school, and the husband's mistress was a teacher at the public school where the twins would attend if they were taken out of parochial school. Seymour v. Seymour, 960 So. 2d 513 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 959 So. 2d 1051, 2007 Miss. LEXIS 382 (Miss. 2007).

As to Miss. Code Ann. § 43-19-101(3)(d), even in those instances where an adjustment may be warranted, the statute does not reference the percentages enumerated in the child support guidelines; rather, it is within the chancellor's discretion to determine an amount appropriate to the needs of the child or children. Further, § 43-19-101(3)(d) did not require the chancellor to make an adjustment to gross income for children living with the parent ordered to pay child support. Magruder v. Magruder, 881 So. 2d 365 (Miss. Ct. App. 2004).

Difference between the statutory guideline figure of $ 559 and the $ 500 awarded by the chancellor amounted to $ 708 per year and could be considered a contribution to the health insurance coverage the father was required to provide for the three children. Since he was the custodial parent of two of the three children, the latter interpretation was consistent with the requirements of Miss. Code Ann. § 43-19-101. Magruder v. Magruder, 881 So. 2d 365 (Miss. Ct. App. 2004).

Chancellor's award of $ 824 a month in child support to the wife in a divorce action was exactly the 20 percent of the husband's income called for by the child support guidelines set forth in Miss. Code Ann. § 43-19-101, and was not excessive; as the award was in accordance with the guidelines, the chancellor was not required to make specific findings justifying the award. Gable v. Gable, 846 So. 2d 296 (Miss. Ct. App. 2003).

Sufficient evidence supported the chancellor's child support award where the chancellor used the father's most recent paycheck to determine his gross income and made all the required statutory deductions to determine the father's gross adjusted income was $1,600 a month; if multiplied by 14 percent, the correct percentage under Miss. Code Ann. § 43-19-101, the total monthly child support equaled $224, which was the amount the father was ordered to pay. McClee v. Simmons, 834 So. 2d 61 (Miss. Ct. App. Dec. 17, 2002).

In a divorce proceeding, court-ordered medical and dental insurance for a child and the other means of support the father was ordered to provide for the child were not mandatory within the meaning of § 43-19-101; therefore, the chancellor did not commit error in declining to consider these payments when he made his statutory calculation of child support. Wells v. Wells, 800 So. 2d 1239 (Miss. Ct. App. 2001).

There is no provision in Miss. Code Ann. § 43-19-101(3) for the deduction of general monthly expenses; therefore, compliance with the child support guidelines mandated that the father's child support should have been calculated without the $716 deduction for monthly expenses. Laird v. Blackburn, 788 So. 2d 844 (Miss. Ct. App. 2001).

In determining the adjusted gross income of the payor husband, who was a dentist, the court properly took into account that he attempted to divert income to his current wife, who was a registered nurse and who worked in his office as an office manager and medical director, by paying her a salary equal to his. Stroud v. Stroud, 758 So. 2d 502 (Miss. Ct. App. 2000).

The chancellor did not intentionally deviate from the statutory guidelines, notwithstanding that the award was greater than that required by the guidelines with respect to the income reported by the husband, where the chancellor attempted to follow the statutory guidelines and the husband hid assets and income. Clark v. Clark, 754 So. 2d 450 (Miss. 1999).

Health, transportation, and college expenses are not included in determining the amount of support under the guidelines, although such extra obligations could well be considered for a downward departure from the guidelines under § 43-19-103. Kilgore v. Fuller, 741 So. 2d 351 (Miss. Ct. App. 1999).

The disparity in the income of the parents and the age of the minor child, who was five years old at the time of the hearing, supported the chancellor awarding child support to the custodial father in an amount less than the statutory guideline of fourteen percent of the mother's adjusted gross income, especially as the mother testified that she was willing to pay the child's monthly tuition to attend a church kindergarten. McGehee v. Upchurch, 733 So. 2d 364 (Miss. Ct. App. 1999).

A chancellor's pronouncement of "broad discretion in setting the amount of child support" is true only to the extent that the award comports with the guidelines or if the deviation is supported by substantial evidence and buttressed by specific, findings in the record. Osborn v. Osborn, 724 So. 2d 1121 (Ct. App. 1998).

While the statute allows the trial court to deduct the expenses of a child living in the non-custodial parent's home the deduction is purely discretionary. Bailey v. Bailey, 724 So. 2d 335 (Miss. 1998).

The court did not err in awarding child support to the wife and in ordering the husband to pay their child's private school tuition where (1) the total of the amount to be paid by the husband closely approximated 14 percent of his gross income, (2) the parties agreed that their child should continue in private school, and (3) the child's basic needs were still adequately provided for in light of the total amount ordered and the financial disclosures of the parties. Collins v. Collins, 722 So. 2d 596 (Miss. 1998).

The court remanded for a determination of the appropriate amount of child support under the statute since one party had income under $5,000 and the chancellor's written findings were insufficient where he stated only that "There is no exact mathematical precision to this decision, but, considering all of the financial information available to the court and the circumstances of the parents, the circumstances of the child, this amount is fair and appropriate." Delozier v. Delozier, 724 So. 2d 984 (Ct. App. 1998).

The court would reverse and remand since the chancellor deviated from the statutory guidelines without specific written findings of fact where the child support award was based, not upon adjusted gross income, but upon the income which remained to the father after payment of his bills. Osborn v. Osborn, 724 So. 2d 1121 (Ct. App. 1998).

The chancellor properly deviated from the guidelines and set an award of child support on the basis of the unemployed husband's earning potential, which the court equated with the amount earned by the wife. White v. White, 722 So. 2d 731 (Ct. App. 1998).

Where temporary financial reverses create an unreliable measure for an award of child support, the chancellor may in his discretion deviate from the guidelines and predicate an award on reasonable earning capacity. White v. White, 722 So. 2d 731 (Ct. App. 1998).

The chancellor made written findings that were sufficient to rebut the presumption that the guidelines were appropriate and to justify a slight variance from them where the court found that the excess amount awarded was justified by the fact that the husband was being allowed to claim one of the children as a tax deduction and that the husband would have as much income after paying child support as the wife would have including child support. Johnston v. Johnston, 722 So. 2d 453 (Miss. 1998).

Although there was nothing inherently wrong with the conclusion of the court not to award child support based on the fact that the husband earned only $180 per month, the matter was remanded since there was no written reference to the guidelines being bypassed and no explanation as to why. Rakestraw v. Rakestraw, 717 So. 2d 1284 (Ct. App. 1998).

Where the court did not relate in its decree or otherwise give proof of financial ability to the award in excess of that required by the guidelines and made no findings with regard to the needs of the children, the award was manifestly erroneous. Clausel v. Clausel, 714 So. 2d 265 (Miss. 1998).

The court erred when it calculated the father's monthly gross income without subtracting the legally mandated deductions for taxes, social security, and nonvoluntary retirement and disability contributions; however, the father was not entitled to have paycheck deductions for medical insurance, 401K retirement fund, and credit union account deducted. Lee v. Stewart ex rel. Summerville, 724 So. 2d 1093 (Miss. Ct. App. 1998).

Chancellor was required to enter written findings in support of upward deviation from child support guidelines, and such findings had to be specific with regard to reasons that guideline amount would be unjust or inappropriate. Knutson v. Knutson, 704 So. 2d 1331 (Miss. 1997).

Father's and wife's children, who lived at home with father and wife, were not "children due support" from father for purposes of child support award guidelines, and thus father's other child, who was living with that child's mother, was entitled to 14% of father's adjusted gross income (AGI). Grace v. Department of Human Servs., 687 So. 2d 1232 (Miss. 1997), overruled on other grounds, Bailey v. Bailey, 724 So. 2d 335 (Miss. 1998).

Guidelines are not mandatory as to specific need or support required, and chancellor is to make determination based on facts he hears, witnesses he views, and circumstances of the parties, especially the child. Bruce v. Bruce, 687 So. 2d 1199 (Miss. 1996), reh'g denied, 691 So. 2d 1026 (Miss. 1996).

A $350 per month award to be paid by a father for the support of his 3 children was manifestly erroneous where the father's adjusted gross income based on his salary, which was his only significant and reliable source of income, was approximately $2,350 per month, the guidelines set forth in § 99-19-101 suggested that he should pay $495 per month in child support, and the chancellor failed to make a specific finding on the record that application of the statutory guidelines would be unjust or inappropriate. Draper v. Draper, 658 So. 2d 866 (Miss. 1995).

A chancellor did not err in deviating from the child support guidelines set forth in § 43-19-101 when determining the amount of support to be paid by a father where she stated her reasons for departing from the guidelines, including the fact that there was "considerable question as to the actual earnings" of the father. Grogan v. Grogan, 641 So. 2d 734 (Miss. 1994).

A chancellor did not abuse her discretion in ordering a father to pay $600 per month for the support of 2 children, in spite of the father's argument that $600 per month constituted 27.5 percent of his adjusted gross income which was 7.5 percent greater than the percentage suggested by the statutory guidelines, where the mother's monthly net income was $1,168, her monthly expenses were $2,225, the chancellor was skeptical as to the father's true earnings, and the evidence suggested that the father had some alternative source of support that he had not disclosed. Grogan v. Grogan, 641 So. 2d 734 (Miss. 1994).

A chancellor did not abuse his discretion in ordering a father to pay $300 in child support for his 14-year-old son, in spite of the father's argument that the amount was excessive because it exceeded 14 percent of his adjusted gross income which was above the statutory guidelines for one child set forth in § 43-19-101, where the record indicated that the father would be able to support himself as well as pay child support in the amount awarded. Ferguson v. Ferguson, 639 So. 2d 921 (Miss. 1994).

A chancellor erred in awarding child support to be paid by the father in the amount of $1,000 per month where the father earned approximately $8,000 per month, and it appeared that the chancellor had used $4,155 as the figure for the father's. Brennan v. Brennan, 638 So. 2d 1320 (Miss. 1994).

A child support award to be paid by a mother for the support of one child was not excessive where the mother's income was almost triple that of the father's, and the chancellor followed the guidelines set out in § 43-19-101 and awarded the 14 percent of adjusted gross income suggested by the statute for the support of a single child. Chamblee v. Chamblee, 637 So. 2d 850 (Miss. 1994).

It was manifest error and an abuse of discretion for a chancellor to find that there had been no material or substantial change in circumstances warranting a modification of a father's child support payments where the father suffered a heart attack approximately one year after the original decree was entered which resulted in a precipitous decline in his income, the father would be required to pay over ½ of his income in child support payments if the original decree were not modified, and the statutory child support guidelines' suggestion and the actual child support ordered constituted a difference of nearly $500.00 a month. McEwen v. McEwen, 631 So. 2d 821 (Miss. 1994).

A child support award would be reversed and remanded where the award was greater than the amount recommended by the guidelines in § 43-19-101, the chancellor did not make a specific finding as to the father's income or make any reference to the statutory child support guidelines, and the final decree did not indicate the basis for the child support award. Dufour v. Dufour, 631 So. 2d 192 (Miss. 1994).

A chancellor abused his discretion in ordering a father to pay child support in the amount of $520 per month where, pursuant to the guidelines set forth in § 43-19-101, the child support should have been $362 per month, and the father's expenses exceeded his net income by almost $250 a month. Dunn v. Dunn, 609 So. 2d 1277 (Miss. 1992).

Although a chancellor's award of child support to be paid by a father was not, standing alone, an abuse of discretion, the amount awarded for child support was an abuse of discretion when considered in conjunction with the alimony award and the income of the father. McEachern v. McEachern, 605 So. 2d 809 (Miss. 1992).

A chancellor's departure from the guidelines set forth in § 43-19-101 in determining an appropriate amount of child support was not error where the chancellor followed the statutory method of rebutting the presumption that 26 percent of the father's adjusted gross income was the appropriate amount of child support, and the record included a written finding, as required by § 43-19-103, that the guidelines were inappropriate in that particular case. McEachern v. McEachern, 605 So. 2d 809 (Miss. 1992).

An increase in a father's child support obligation from $300 to $750 per month was excessive and unsupported by the evidence in the record, even though the father's income and resources had increased over time, where the mother's income had also steadily increased, the child had not required any extraordinary or unexpected care or treatment, there was no evidence that any of the child's needs had gone unmet, the child's actual expenses averaged approximately $260 per month, and utilization of the child support guidelines set forth in § 43-19-101 produced a monthly figure of approximately $583. Hammett v. Woods, 602 So. 2d 825 (Miss. 1992).

A disabled child's receipt of Supplemental Security Income from the Social Security Administration does not reduce parental support obligations. Hammett v. Woods, 602 So. 2d 825 (Miss. 1992).

Section 43-19-101, which sets forth child support award guidelines, is only a guideline and may not determine the specific need or the specific support required; the determination of the amount of support needed must be made by a chancellor who hears all the facts, views the witnesses, and is informed at trial of the circumstances of the parties and particularly the circumstances of the child. Gillespie v. Gillespie, 594 So. 2d 620 (Miss. 1992).

The enactment of the child support award guidelines in § 43-19-101, which provides that child support payments for 2 children should be 20 percent of the parent's adjusted gross income, did not constitute a "material change in circumstances" warranting a modification of a father's child support obligation, even though the father's child support payments for 2 children were more than 20 percent of his adjusted gross income. Gregg v. Montgomery, 587 So. 2d 928 (Miss. 1991).

There was no error in a chancellor's decision to leave a father's child support obligation at $250 per month where the father argued that his salary had declined drastically from that earned in previous years but there was an indication that this was a voluntary choice of the father's, the father argued that his monthly support burden should be at least $80 less in accordance with the guidelines of § 43-19-101, and the wife argued that her monthly expenses outstripped her income by approximately $600 each month but she had received an increase in monthly income since the final decree. Caldwell v. Caldwell, 579 So. 2d 543 (Miss. 1991).

A child support award of $400 per month for one 6-year-old child was excessive where the father, who had custody of the child, only asked for $100 per month in child support, the chancellor recognized that $400 per month was not required at the time for child support, and both parents had approximately the same earnings. The chancellor should have considered the amount of money which reasonably should have been required in child support from each parent, but apparently considered only the guidelines developed by the Governor's Commission on Child Support. Jellenc v. Jellenc, 567 So. 2d 847 (Miss. 1990).

The guidelines for child support awards set forth in § 43-19-101 must not control a chancellor's award of child support. The national guideline must not dictate the amount of food, the need of clothing, the requirement of education or the standard of living of the children. Rather, this should be done by a chancellor who hears all the facts, views the witnesses, and is informed at trial of the circumstances of the parties and particularly the circumstances of the children. The guidelines may be received and considered in all support matters as relevant, but the guidelines may not determine the specific need or the specific support required; this is to be done by a chancellor at a time real, on a scene certain, and with a knowledge special to the actual circumstances and to the individual child or children. Thurman v. Thurman, 559 So. 2d 1014 (Miss. 1990).

2. Applicability.

Chancellor did not err by using a mentally disabled father's Supplemental Security Income (SSI) benefits to calculate child support pursuant to Miss. Code Ann. § 43-19-101, though the chancellor was not required to consider SSI benefits in determining whether and in what amount to award child support. The chancellor properly utilized discretion based on the facts of the particular case. However, pursuant to 42 U.S.C.S. § 407(a), the SSI payments were not subject to a withholding order, attachment, garnishment, or other legal process to satisfy the father's child-support obligation. Barnes v. Dep't of Human Servs., 42 So. 3d 10 (Miss. 2010), writ of certiorari denied by 131 S. Ct. 1487, 179 L. Ed. 2d 321, 2011 U.S. LEXIS 1613, 79 U.S.L.W. 3476 (U.S. 2011).

Escalation clause was enforceable and evidence of the parties' actions indicated that the intent of the clause was to use the 20 percent guideline for child support for two children. Stigler v. Stigler, 48 So. 3d 547 (Miss. Ct. App. 2009), writ of certiorari denied by 49 So. 3d 1139, 2010 Miss. LEXIS 619 (Miss. 2010).

Chancery court made sufficient findings in the record in accordance with Miss. Code Ann. § 43-19-101(4) where the chancellor stated in her findings of fact that the application of the statutory child support guidelines to the adjusted gross income of each of the parties was reasonable and detailed the income of each party, the number of children living in each party's home, and the amount that would equal in child support and further noted that each parent would pay his or her portion of child support to the other in accordance with the statutory guidelines. Reid v. Reid, 998 So. 2d 1032 (Miss. Ct. App. 2008).

Father argued that $ 500 per month in child support was much more than 20 percent of his adjusted gross income, but the father did not produce the needed financial records to determine his adjusted gross income; at trial, the father only produced two pay stubs and admitted to having others at home in California. The father testified about having a college education and being qualified in numerous fields related to the financial world, and he claimed to be an accomplished actor; therefore, the chancellor had evidence that he was able to contribute $ 500 per month in child support. Suber v. Suber, 936 So. 2d 945 (Miss. Ct. App. 2006).

Where a father's adjusted gross income was $9,370 per month, and the guidelines percentage for two children was 20%, the trial court did not abuse its discretion in ordering the father to pay $2,000 per month in child support, and the court's written finding that the husband was capable of supporting himself while paying the amount of child support ordered was sufficient to support the finding. Henderson v. Henderson, 952 So. 2d 273 (Miss. Ct. App.2006), writ of certiorari denied by 951 So. 2d 563, 2007 Miss. LEXIS 165 (Miss. 2007).

Where the husband's adjusted gross income exceeded $ 50,000, the Mississippi child support guidelines contained in Miss. Code Ann. § 43-19-101 did not apply unless the Court determined that an application of the guidelines was reasonable, and the chancellor properly utilized the guidelines to shape his decision as to the amount of child support by taking into account the husband's income and also his paying for health insurance for the children. Barnett v. Barnett, 908 So. 2d 833 (Miss. Ct. App. 2005).

Where a father made significantly more income than a mother and the father had enrolled their child in private school before the divorce and wished the child to continue there, an award of child support exceeding the statutory guidelines was not in error. Southerland v. Southerland, 875 So. 2d 204 (Miss. 2004).

In his testimony, the husband agreed to the child support amount. A noncustodial parent may agree to pay child support in an amount greater than the guidelines. Burcham v. Burcham, 869 So. 2d 1058 (Miss. Ct. App. 2004).

Chancellor properly declined to apply the child support guidelines because the husband had no employment income due to his incarceration; but as he had other assets, including half the equity in the marital home, the chancellor properly ordered him to pay $ 225 per month in child support, plus support retroactive to the date of his incarceration, secured by a lien against his interest in the marital home. Avery v. Avery, 864 So. 2d 1054 (Miss. Ct. App. 2004).

Because the husband had an adjusted gross income of more than $ 50,000, the child support guidelines did not apply; therefore, the trial court was not in error in deviating from the child support guidelines. Holley v. Holley, 892 So. 2d 240 (Miss. Ct. App. 2003), affirmed in part and reversed in part by, remanded in part by 892 So. 2d 183, 2004 Miss. LEXIS 1171 (Miss. 2004).

Chancellor's findings that the husband should be responsible for the college expenses of the parties' college age daughter upon the divorce of the husband and wife, but that the husband should not otherwise pay child support to the wife, were not clearly erroneous and were, therefore, affirmed on appeal. Lazarus v. Lazarus, 841 So. 2d 181 (Miss. Ct. App. 2003).

Although the trial court's order that the parties split the child's tuition expenses 70/30 was above the statutory guidelines, such a split was appropriate under the circumstances when the husband was seemingly trying to avoid paying the child's tuition, despite the trial court's earlier order as part of the divorce decree that the children be provided with college educations. Fancher v. Pell, 831 So. 2d 1137 (Miss. 2002).

Husband's agreement prior to a divorce to send a child to private school was by itself an inadequate basis for an award of child support in excess of that allowed by the statutory child support award guidelines. Southerland v. Southerland, 816 So. 2d 1004 (Miss. 2002).

The trial court erred in deviating from the guidelines and awarding no child support on the basis that the father was awarded 50 percent visitation/custody where the court awarded the father 10 weeks in the summer, every other weekend, and alternating holidays as such award did not amount to 50 percent visitation. Mitchell v. Mitchell, 767 So. 2d 1037 (Miss. Ct. App. 2000).

The trial court did not err in deviating from the guidelines by awarding $500 per month in child support, rather than the $485 per month called for by the guidelines, where the court found that the upward deviation was appropriate because of unusual medical expenses for the children at issue. Grant v. Grant, 765 So. 2d 1263 (Miss. 2000).

The court properly ordered the noncustodial father to pay $500 per month in child support where that amount was somewhat less than required by the guidelines based on his recent income, but the court explained that he was reducing child support payments to give the father the opportunity to pay his bills and some outstanding debts. James v. James, 756 So. 2d 847 (Miss. Ct. App. 2000).

Where the chancellor awarded no child support in connection with an award of split custody, but did not cite the statute in reasoning its deviation from the guidelines, the matter would be remanded for the chancellor to specifically reference, in writing, why the statutory guidelines were inappropriate or unjust. Brocato v. Brocato, 731 So. 2d 1138 (Miss. 1999).

3. Guidelines; adherence to.

Because the husband received custody of the couple's two minor children and the chancellor actually valued the wife's adjusted gross income rather conservatively, considering that some evidence suggested that the wife's parents gave her more than $3,000 per month, the chancellor did not err in ordering the wife to pay the husband child support in the amount of 20 percent of her adjusted gross income. Houston v. Houston, 121 So. 3d 283 (Miss. Ct. App. 2013).

Evidence relied on by the chancellor provided support for a child support award to a father as the record reflected the reasonableness of the chancellor's reliance upon testimony in the record, financial disclosures, and the mother's recent check stub in his calculations. The chancellor used the guidelines in Miss. Code Ann. § 43-19-101 (Rev. 2009). Robinson v. Brown, 58 So. 3d 38 (Miss. Ct. App. 2011).

Chancellor followed the guidelines of Miss. Code Ann. § 43-19-101 (Rev. 2009) when calculating a child support award, and the financial information relied on by the chancellor supported the award of child support. Robinson v. Brown, — So. 3d —, 2011 Miss. App. LEXIS 31 (Miss. Ct. App. Jan. 25, 2011), opinion withdrawn by, substituted opinion at, modified by 58 So. 3d 38, 2011 Miss. App. LEXIS 160 (Miss. Ct. App. 2011).

4. Guidelines; deviation from.

Chancellor did not err by holding that an upward deviation of a former spouse's child-support obligation was warranted, given the lifestyle to which the four children living with the other former spouse were accustomed. Crittenden v. Crittenden, 129 So. 3d 947 (Miss. Ct. App. 2013).

Chancellor did not err, under Miss. Code Ann. § 43-19-103, by requiring a parent to pay monthly child support greater than the fourteen percent of the parent's adjusted-gross income prescribed by Miss. Code Ann. § 43-19-101 because the subject child had to go to day-care for the other parent to retain employment, and the parents each lived rent free with one or both of their own parents. Marin v. Stewart, 122 So. 3d 153 (Miss. Ct. App. 2013).

Chancellor did not exceed his authority in deviating from the statutory child support guidelines, Miss. Code Ann. § 43-19-101(2), and awarding $ 400 per month because the chancellor considered the total available assets of the parties and the minor child, as well as the shared parenting arrangement, and the child's current level of self-sufficiency, and found the application of the statutory guidelines was not reasonable; the parties' minor child had the use of a vehicle, an almost completed undergraduate degree, personal assets, and three bank accounts. Dogan v. Dogan, 98 So. 3d 1115 (Miss. Ct. App. Oct. 9, 2012).

Chancellor erred in granting a father a downward modification of his child support payments, but setting the amount of payments greater than that required by the support guidelines, Miss. Code Ann. § 43-19-101(1) (Rev. 2009), because the chancellor's findings of fact were inadequate to support the reduction. Evans v. Evans, 75 So. 3d 1083 (Miss. Ct. App. 2011), writ of certiorari denied by 76 So. 3d 169, 2011 Miss. LEXIS 557 (Miss. 2011), writ of certiorari denied by 2011 Miss. LEXIS 572 (Miss. Dec. 1, 2011).

In a divorce matter, the chancellor erred in ordering the wife to pay an amount of child support in excess of the statutory child-support guidelines under Miss. Code Ann. § 43-19-101(1). While the chancellor may have based the award on the wife's earning capacity rather than her actual earnings, no such on-the-record findings were made. Wheat v. Wheat, 37 So. 3d 632 (Miss. 2010).

Chancellor erred when he deviated from the statutory child support guidelines set forth in Miss. Code Ann. § 43-19-101, which carry a rebuttable presumption of correctness, without providing a legally sufficient reason for doing so; estrangement was not a basis for deviation from statutory child-support guidelines and was not an excuse for failing to pay child support. Lowrey v. Lowrey, 25 So. 3d 274 (Miss. 2009).

For purposes of Miss. Code Ann. § 43-19-101(3)(d), the trial court did not subtract an amount from the adjusted gross income, but improperly used the guideline percentage for two children and divided it between the two children; the trial court did not follow the method provided in § 43-19-101(3)(d) and did not provide any written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in this case that would overcome the presumption that the guidelines were appropriate under Miss. Code Ann. § 43-19-103, and thus the court had to reverse and remand so that the child support award could be calculated in accordance with Miss. Code Ann. § 43-19-101, or alternatively the trial court had to justify its failure to do so. Grove v. Agnew, 14 So. 3d 790 (Miss. Ct. App. 2009).

Trial court's award represented approximately 10 percent of the father's adjusted gross income, while the statutory percentage of adjusted gross income for one child was 14 percent under Miss. Code Ann. § 43-19-101(1). Grove v. Agnew, 14 So. 3d 790 (Miss. Ct. App. 2009).

Record did not substantially support the chancellor's child support award in light of Miss. Code Ann. § 43-19-101(3)(a)-(b). The chancellor accepted the husband's asserted monthly self-employment income reflected on his tax documents as $ 1,880 without considering the potential commingling of the company's assets and expenses with personal assets and expenses, all of husband's income sources, and without considering the generally recognized test for determining self-employment income. Faerber v. Faerber, 13 So. 3d 853 (Miss. Ct. App. 2009).

Husband, as a skilled medical professional, had the ability to earn a substantial income, whereas at this time, the wife did not, and the chancellor considered the child's private school tuition and enhanced educational activities; the son's extracurricular activities and the lifestyle to which the family was accustomed met the criteria in Miss. Code Ann. § 43-19-103(f), and the chancellor found it reasonable to apply the fourteen percent statutory standard to the husband's adjusted gross monthly income. Smith v. Smith, 25 So. 3d 369 (Miss. Ct. App. 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 17 (Miss. 2010).

Substantial evidence supported an upward adjustment of child support under Miss. Code Ann. § 93-5-23 based on a material change in circumstances because of the child's increased needs and expenses, inflation, and the father's improved financial condition and earning capacity, and the child was attending college and also had transportation costs; further, departure from the 14 percent guideline set forth in Miss. Code Ann. § 43-19-101 was proper because the father consistently earned more than $50,000 per year and the chancellor's findings concerning the child's needs and circumstances supported the departure. Wallace v. Wallace, 965 So. 2d 737 (Miss. Ct. App. 2007).

In making the finding of the inapplicability of the statutory guidelines to the wife's child support award, the chancellor failed to fully comply with Miss. Code Ann. § 43-19-101(2) by making a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Miss. Code Ann. § 43-19-103; on remand, should the chancellor decide again to deviate from the statutory guidelines, the chancellor had to make a specific, on-the-record finding which would overcome the rebuttable presumption. Yelverton v. Yelverton, 961 So. 2d 19 (Miss. 2007), appeal dismissed by 2007 Miss. LEXIS 565 (Miss. Oct. 11, 2007), remanded by 26 So. 3d 1053, 2010 Miss. LEXIS 50 (Miss. 2010).

5. Findings of fact.

Chancellor's decision to include the husband's profits from vehicle sales in calculating child support was not clearly erroneous given that the issue turned on the parties' testimony, and the chancellor was the sole authority for determining witness credibility. Ainsworth v. Ainsworth, — So. 3d —, 2014 Miss. App. LEXIS 295 (Miss. Ct. App. May 27, 2014).

Chancellor did not err by failing to provide a written finding stating whether the application of a statutory guideline was reasonable because the chancellor ultimately provided a thoroughly written finding explaining the application of the statutory guideline in determining the appropriate child support, and there was nothing on the issue for the chancellor to address that the chancellor did not address in the chancellor's final judgment. Stout v. Stout, — So. 3d —, 2013 Miss. App. LEXIS 854 (Miss. Ct. App. Dec. 10, 2013), writ of certiorari denied by 2014 Miss. LEXIS 394 (Miss. Aug. 7, 2014).

In calculating child support, the trial court abused its discretion in attributing any future rental income to the husband, as it had awarded the rental property to the wife. Collins v. Collins, 112 So. 3d 428 (Miss. 2013).

In calculating child support, the trial court erred in arbitrarily determining a husband's monthly income to exclusion of the undisputed evidence he provided, due to his failure to comply with Miss. Unif. Ch. Ct. R. 8.05, because the remedy for his violation was to hold him in contempt, not to disregard the credible evidence he provided. Collins v. Collins, 112 So. 3d 428 (Miss. 2013).

While a chancellor erred in including rentals in a husband's income, the error was harmless as the chancellor discussed and made specific findings for child support under Miss. Code Ann. §§ 43-19-101, 43-19-103 and properly relied on the parties' Miss. Unif. Ch. Ct. R. 8.05 disclosure forms and other documentary evidence. Collins v. Collins, 112 So. 3d 460 (Miss. Ct. App. 2012), affirmed in part and reversed in part by, remanded by 112 So. 3d 428, 2013 Miss. LEXIS 285 (Miss. 2013).

Since a mother failed to raise to the chancellor her challenge to the reasonableness of the child-support guidelines, she was barred from challenging the chancellor's failure to make specific findings of fact on the reasonableness of the guidelines. Robinson v. Brown, 58 So. 3d 38 (Miss. Ct. App. 2011).

As the record indicated that a husband's income was much higher than claimed on the husband's financial disclosure statement, a determination of the husband's income and entry of a child support order in accordance with Miss. Code Ann. § 43-19-101 was required, in a divorce proceeding; for example, there was explanation in the record as to how a $ 127,520 depreciation deduction was utilized. Holdeman v. Holdeman, 34 So. 3d 650 (Miss. Ct. App. 2010).

The chancery court had the authority to modify the provisions of an agreement regarding child support in a divorce action, and absent any showing that the final written order did not reflect the agreement announced in court, or any identification of a matter cognizable under Miss. R. Civ. P. 60 that could lead to setting aside a consent decree after being entered, the parties were bound by their agreement, notwithstanding fact that the chancellor did not make specific, written findings supporting the child support award pursuant to Miss. Code Ann. § 43-19-101(4). Woodfin v. Woodfin, 26 So. 3d 389 (Miss. Ct. App. 2010).

Chancellor did not abuse her discretion by basing her decision solely upon the father's trust income, and not including income from his farming operations, where the record showed there was contradictory evidence as to the net income or loss arising out of the farming operations, and that the chancellor examined such evidence thoroughly before making her ruling. Owen v. Owen, 22 So. 3d 386 (Miss. Ct. App. 2009).

Recalculation of a child support award was required because mandatory deductions under Miss. Code Ann. § 43-19-101(3)(b) for federal and state taxes and for social security and Medicare payments had not been deducted from the calculation of the husband's gross income. Holloway v. Holloway, 31 So. 3d 57 (Miss. Ct. App. 2009), writ of certiorari dismissed by 29 So. 3d 774, 2010 Miss. LEXIS 155 (Miss. 2010).

Because the father's adjusted gross income was greater than $ 50,000, the trial court was required to state on the record whether the guidelines were reasonable, for purposes of Miss. Code Ann. § 43-19-101(4). Grove v. Agnew, 14 So. 3d 790 (Miss. Ct. App. 2009).

Although the chancery court did not make a written finding as to whether the application of the guidelines was reasonable pursuant to Miss. Code Ann. § 43-19-101(4), it was clear that the chancery court considered the twenty percent statutory guideline figure set forth in Miss. Code Ann. § 43-19-101(1) in setting a former husband's support obligation for his two children because the chancery court stated that it took into account its statutory discretion and the children's needs. Because the husband's child support obligation was less than the amount set forth by the guidelines and the husband did not contend that the amount of child support awarded was unreasonable, the chancery court's failure to make a written finding as to the reasonableness of the guidelines did not constitute reversible error. Morris v. Morris, 5 So. 3d 476 (Miss. Ct. App. 2008).

In a child custody case, if a second order entered by a chancellor was not a result of an agreement between the parents, then the chancellor should have made findings of fact as to why child support was less than the amount required by the guidelines. Klein v. McIntyre, 966 So. 2d 1252 (Miss. Ct. App. 2007).

Chancellor did not err by ordering a former husband to pay child support in the amount of $2,500 for two minor children because the guidelines did not have to be followed since the husband earned more than $50,000 per year. Yelverton v. Yelverton, 961 So. 2d 48 (Miss. Ct. App. 2006), reversed by, remanded by 961 So. 2d 19, 2007 Miss. LEXIS 414 (Miss. 2007).

Monthly child support payment of $ 300 per month was in line with 14 percent of an annual income of $ 26,000 per year; that indicated that the trial court, evaluating all of the evidence presented, determined that the father's yearly income was $ 26,000 and then based its statutory calculations on that figure. That was not manifest error as there was evidence to support the chancellor's award; the chancery court applied the guidelines in its determination of the amount of child support, and therefore under Miss. Code Ann. § 43-19-101, no written findings of fact were required, and the amount of $ 300 was within the statutory guidelines. Bryant v. Bryant, 924 So. 2d 627 (Miss. Ct. App. 2006).

Findings of the chancellor in awarding child support to the wife were sufficient to comply with the requirements of Miss. Code Ann. § 43-19-101 where the husband's income was not greater than fifty thousand dollars per year; the chancellor's findings were not required to be in writing, and the husband's argument that the chancellor abused his discretion and committed manifest error was without merit. Gray v. Gray, 909 So. 2d 108 (Miss. Ct. App. 2005).

In the husband's appeal of the award of child support, the court rejected the husband's claim that the chancellor did not comply with Miss. Code Ann. § 43-19-101(4) requiring that the chancellor provide a written finding that the application of the statutory guidelines to income in excess of $ 50,000 was reasonable because the chancellor declared in his written judgment, that although the husband's income exceeded $ 50,000 he saw no reason to deviate from the statutory child support guideline of 20 percent of the adjusted gross income. While the chancellor's statement was rather succinct, it was nonetheless a written finding of reasonableness, especially when the statement was taken in the context of the chancellor's opinion as a whole in consideration of the facts and circumstances of the case. Peters v. Peters, 906 So. 2d 64 (Miss. Ct. App. 2004).

Finding in favor of the husband in the parties' divorce action was improper where the chancellor's specific findings were deficient because the husband's adjusted gross income exceeded $50,000, Miss. Code Ann. 43-19-101(4), but the chancellor's opinion and judgment contained no written findings as to whether the statutory guidelines were reasonable or whether a departure was appropriate. Thus, the court had no guidance on how the chancellor arrived at child support in the amount of $400 per month, per child. Thompson v. Thompson, 894 So. 2d 603 (Miss. Ct. App. 2004), writ of certiorari denied by 893 So. 2d 1061, 2005 Miss. LEXIS 138 (Miss. 2005).

The chancellor made sufficient findings of fact to support his decision to apply the suggested percentage for one child to the husband's full income even though that income was greater than $50,000 where the chancellor explained the source of the husband's income, noted that the income was expected to continue, and found that the resulting child support award was necessary and reasonable to maintain a reasonable standard of living for the child. Vaughn v. Vaughn, 798 So. 2d 431 (Miss. 2001).

Under subsection (2) of this section, an on-the-record finding as to the applicability of the child support guidelines is required on both the initial award of child support and any subsequent modification of child support. Turner v. Turner, 744 So. 2d 332 (Miss. Ct. App. 1999).

6. Needs of other children.

Chancellor did not abuse his discretion in not giving the father a deduction for the child living in his home where the father did not mention any need that the custodial child might have which was greater than that of any of the other children; the father did not attempt to offer any proof of the expenses that child might have. McClee v. Simmons, 834 So. 2d 61 (Miss. Ct. App. Dec. 17, 2002).

As a chancellor in his discretion may reduce gross income by an amount sufficient to provide for children living with the parent required to pay support, it is logical to also allow a chancellor to consider other sources available for the support of those children, such as the income of the subsequent spouse of the obligor parent. Shepherd v. Shepherd, 769 So. 2d 242 (Miss. Ct. App. 2000).

Subsection (3)(d) of this section does not allow for a deduction for children of a noncustodial parent's subsequent spouse. Kilgore v. Fuller, 741 So. 2d 351 (Miss. Ct. App. 1999).

7. Modification of support.

Without any information to determine what the chancery court considered in modifying the father's child-support obligation, the appellate court was unable to determine whether there was an abuse of discretion, and the chancery court committed reversible error in modifying the father's child support obligation. Curry v. Frazier, 119 So. 3d 362 (Miss. Ct. App. 2013).

In determining a father's child support obligation upon granting an upward modification, the trial court properly gave him a credit for taxes, which amounted to a deduction from his monthly gross income, as well as other credits for support paid to his other children and payments for health insurance for all of his children. Williams v. Dep't of Human Servs., 116 So. 3d 176 (Miss. Ct. App. 2013).

Trial court properly calculated the father's adjusted gross income for purposes of an upward modification of his child-support payment, as the inclusion of his overtime pay was proper where it was reasonable to anticipate that he would receive overtime wages in the future, and other appropriate deductions were made. Williams v. Dep't of Human Servs., 116 So. 3d 176 (Miss. Ct. App. 2013).

Substantial evidence supported the chancery court's decision not to increase a father's monthly child-support payment, Miss. Code Ann. § 43-19-101(1), despite an increase in the father's income because the father had the financial burden of traveling out-of-state to exercise his visitation rights with the children. Quinones v. Garcia, 97 So. 3d 109 (Miss. Ct. App. 2012).

Although a former wife claimed a chancellor erred by failing to increase a former husband's child support obligation to an amount based upon 20 percent of the husband's income, in accordance with Miss. Code Ann. § 43-19-101, the chancellor did not abuse his discretion because the chancellor provided the required findings explaining his calculation of expenses and decision to deviate from the guidelines; the husband's income had increased from $ 37,000 to $ 240,000. Sturdavant v. Sturdavant, 53 So. 3d 838 (Miss. Ct. App. 2011).

Although the husband contended that the chancellor should have made specific, written findings supporting the child support award pursuant Miss. Code Ann. § 43-19-101(4) (Rev. 2009), the court found that the chancery court had the authority to modify the provisions of an agreement regarding child support in a divorce action, and absent any showing that the final written order did not reflect the agreement announced in court, or any identification of a matter cognizable under Miss. R. Civ. P. 60 that could lead to setting aside a consent decree after being entered, the parties were bound by their agreement. Therefore, because the parties agreed to the amount of child support in the agreement which was read in open court, and the chancellor merely recited the agreement and reduced the husband's contribution to the children's college expenses by half, the husband was bound to the provisions in the agreement that the chancellor approved. Woodfin v. Woodfin, 26 So. 3d 389 (Miss. Ct. App. 2010).

Upon finding that a 21-year-old son was emancipated, a father's duty to pay child support for the son ceased, and his child support obligation then became solely for his daughter. Therefore, the father was entitled to a support modification and a credit on his arrearage because he should have only been paying 14 percent of his adjusted gross income for one child, instead of 20 percent for two children. Andres v. Andres, 22 So. 3d 314 (Miss. Ct. App. 2009).

Because a mother had gained employment and when her employment stabilized, she could be required to make child support payments in compliance with Miss. Code Ann. § 43-19-101(1). Mercier v. Mercier, 11 So. 3d 1283 (Miss. Ct. App. 2009).

Pursuant to Miss. Code Ann. § 43-19-101(3)(a), insurance benefits not needed for the father's treatment were considered in calculating child support, and there was no error in modification of monthly support. Crayton v. Burley, 952 So. 2d 957 (Miss. Ct. App. 2006).

Finding against the mother was proper in part where, since the father's gross income increased only slightly, his modest increase in adjusted gross income did not justify a 25 percent increase in child support payments, Miss. Code Ann. § 43-19-101. Riddick v. Riddick, 906 So. 2d 813 (Miss. Ct. App. 2004).

Chancery court did not err in finding the father to be in contempt for unpaid child support and in denying his petition to modify child custody and support, because the father had recovered from his injury and returned to work, had failed to promptly seek a modification after his injury and the support amount was within the guidelines of Miss. Code Ann. § 43-19-101 and presumed reasonable. No evidence overcame that presumption and nothing in the record indicated that the chancery court had committed manifest error in declining to modify the child support provisions. Bosarge v. Bosarge, 879 So. 2d 515 (Miss. Ct. App. 2004).

There was no basis on which to determine that the father was being required to pay more than the guidelines suggested as child support because (1) the appellate court was unable to determine from the record if the father was paying more than 22 percent of his adjusted gross income in child support, Miss. Code Ann. § 43-19-101; (2) the final divorce decree was not included in the record nor was any evidence of the father's income or the children's tuition expenses; and (3) the chancellor knew that the father's income had been reduced and still ordered him to make the tuition payments, which were apparently less than originally had been required because of the school's grant; thus, the father's petition to modify his child support and tuition payments was properly denied. Halle v. Harper, 869 So. 2d 439 (Miss. Ct. App. 2004).

Chancery court did not err in denying a husband's motion for modification of the amount of child support payable under an agreement entered into in connection with the parties' irreconcilable differences divorce where husband had paid less than 10 percent of the amount due and had voluntarily changed jobs resulting in a lowering of the husband's income; husband was ordered to not only continue paying the agreed amount but the amount of the husband's monthly obligation was increased to pay the past due amount. Seeley v. Stafford, 840 So. 2d 111 (Miss. Ct. App. 2003).

When it is evident that a non-custodial parent was exempted from a child support obligation at the time of an earlier court order only because of being unemployed, there is no logic to requiring proof that the parent's later obtaining of employment is a material change in circumstances; in such a situation, it is justified to modify the earlier decree and require support consistent with the statute that sets out the support guidelines, Miss. Code Ann. § 43-19-101. Lacey v. Lacey, 822 So. 2d 1132 (Miss. Ct. App. 2002).

Although the divorce decree exempted the mother from paying child support, because the mother was a non-custodial parent who was now sober and employed, she was no longer exempted from paying child support and a modification of the decree requiring her to provide her two children with 20 percent of her adjusted gross income was proper. Lacey v. Lacey, 822 So. 2d 1132 (Miss. Ct. App. 2002).

Chancellor's modification of a parent's child support obligation to $1,000 per month was remanded for reconsideration in light of the fact that the chancellor's calculation of the parent's annual income was more than $300,000 below the parent's actual income. Moulds v. Bradley, 791 So. 2d 220 (Miss. 2001).

The statute addressed the issue of income and what was included when tabulating child support and included items in a person's salary package; father's housing allowance as part of his church salary constituted gross income and was included in the tabulation. Bustin v. Bustin, 806 So. 2d 1136 (Miss. Ct. App. 2001).

Downward modification denied where father's income was nearly unchanged, it had been only 15 months since he agreed to the current child support amount, and his considerable personal debt was newly accumulated through his willful and foreseeable acts. Magee v. Magee, 755 So. 2d 1057 (Miss. 2000).

The chancellor erred in not referencing the statutory guidelines in making his specific findings of fact regarding an increase in child support. Wallace v. Bond, 745 So. 2d 844 (Miss. 1999).

The court erred in increasing the amount of child support to be paid by a father for his teenage daughter where the guidelines provided for an award of 14 percent of the father's adjusted gross income and the award was 22 percent of his adjusted gross income. Kilgore v. Fuller, 741 So. 2d 351 (Miss. Ct. App. 1999).

8. Retroactivity of award.

The court properly made a modification of child support retroactive to the date that the petition was filed, rather than the date the order was entered, notwithstanding that the modification was based in part on an annual bonus received after the date that the petition was filed; the chancellor was justified in including the bonus received in July in the appellant's income for the whole year, not just for the latter half of the year. Alderson v. Morgan by & Through Champion, 739 So. 2d 465 (Miss. Ct. App. 1999).

RESEARCH REFERENCES

ALR. Change in financial condition or needs of parents or children as ground for modification of decree for child support payments. 89 A.L.R.2d 7.

Excessiveness or adequacy of money awarded as child support. 27 A.L.R.4th 864.

Excessiveness or adequacy of amount of money awarded for alimony and child support combined. 27 A.L.R.4th 1038.

Application of child-support guidelines to cases of joint-, split- or similar shared-custody arrangements. 57 A.L.R.5th 389.

Basis for imputing income for purpose of determining child support where obligor spouse is voluntarily unemployed or underemployed. 76 A.L.R.5th 191.

Am Jur. 24A Am. Jur. 2d, Divorce and Separation §§ 916, 917 et seq.

Law Reviews. 1989 Mississippi Supreme Court Review: Child Support. 59 Miss. L. J. 891, Winter, 1989.

Family Law At the Turn of the Century, 71 Miss. L.J. 781, Spring, 2002.

Mississippi's Child Support Guidelines: Need, Process and Review, 70 Miss. L.J. 1065, Spring, 2001.

Practice References. Family Law and Practice (Matthew Bender).

Family Law Litigation Guide with Forms: Discovery, Evidence, Trial Practice (Matthew Bender).

§ 43-19-103. Criteria for overcoming presumption that guidelines are appropriate.

The rebuttable presumption as to the justness or appropriateness of an award or modification of a child support award in this state, based upon the guidelines established by Section 43-19-101, may be overcome by a judicial or administrative body awarding or modifying the child support award by making a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined according to the following criteria:

(a) Extraordinary medical, psychological, educational or dental expenses.

(b) Independent income of the child.

(c) The payment of both child support and spousal support to the obligee.

(d) Seasonal variations in one or both parents' incomes or expenses.

(e) The age of the child, taking into account the greater needs of older children.

(f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines.

(g) The particular shared parental arrangement, such as where the noncustodial parent spends a great deal of time with the children thereby reducing the financial expenditures incurred by the custodial parent, or the refusal of the noncustodial parent to become involved in the activities of the child, or giving due consideration to the custodial parent's homemaking services.

(h) Total available assets of the obligee, obligor and the child.

(i) Payment by the obligee of child care expenses in order that the obligee may seek or retain employment, or because of the disability of the obligee.

(j) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt.

SOURCES: Laws, 1989, ch. 439, § 2; Laws, 2012, ch. 552, § 3, eff from and after passage (approved May 22, 2012.)

Cross References — Child support award guidelines, see § 43-19-101.

JUDICIAL DECISIONS

1. In general.
2. Medical expenses.
3. Education expenses.

1. In general.

Social Security benefits which a parent received on behalf of the parent's other child, whose other parent was deceased, was not a reason to decrease the obligor parent's child-support obligations, because the benefits belonged to the parent's other child, not the obligor parent's child. Marin v. Stewart, 122 So. 3d 153 (Miss. Ct. App. 2013).

Chancellor did not err by requiring a parent to pay monthly child support greater than the fourteen percent of the parent's adjusted-gross income prescribed by Miss. Code Ann. § 43-19-101 because the subject child had to go to day-care for the other parent to retain employment, and the parents each lived rent free with one or both of their own parents. Marin v. Stewart, 122 So. 3d 153 (Miss. Ct. App. 2013).

Low income is not among the statutory criteria in Miss. Code Ann. § 43-19-103 for overcoming the presumption in favor of the child-support guidelines. Lowrey v. Lowrey, 25 So. 3d 274 (Miss. 2009).

For purposes of Miss. Code Ann. § 43-19-101(3)(d), the trial court did not subtract an amount from the adjusted gross income, but improperly used the guideline percentage for two children and divided it between the two children; the trial court did not follow the method provided in § 43-19-101(3)(d) and did not provide any written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in this case that would overcome the presumption that the guidelines were appropriate under Miss. Code Ann. § 43-19-103, and thus the court had to reverse and remand so that the child support award could be calculated in accordance with Miss. Code Ann. § 43-19-101, or alternatively the trial court had to justify its failure to do so. Grove v. Agnew, 14 So. 3d 790 (Miss. Ct. App. 2009).

In making the finding of the inapplicability of the statutory guidelines to the wife's child support award, the chancellor failed to fully comply with Miss. Code Ann. § 43-19-101(2) by making a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Miss. Code Ann. § 43-19-103; on remand, should the chancellor decide again to deviate from the statutory guidelines, the chancellor had to make a specific, on-the-record finding which would overcome the rebuttable presumption. Yelverton v. Yelverton, 961 So. 2d 19 (Miss. 2007), appeal dismissed by 2007 Miss. LEXIS 565 (Miss. Oct. 11, 2007), remanded by 26 So. 3d 1053, 2010 Miss. LEXIS 50 (Miss. 2010).

Where a father's adjusted gross income was $9,370 per month, and the guidelines percentage for two children was 20%, the trial court did not abuse its discretion in ordering the father to pay $2,000 per month in child support. Henderson v. Henderson, 952 So. 2d 273 (Miss. Ct. App.2006), writ of certiorari denied by 951 So. 2d 563, 2007 Miss. LEXIS 165 (Miss. 2007).

In a divorce case, a chancellor did not err in determining a husband's adjusted gross income by using evidence from his financial statement, a tax return, and the testimony of witnesses; moreover, the chancellor correctly applied Miss. Code Ann. § 43-19-103 in determining the amount of child support. Spahn v. Spahn, 959 So. 2d 8 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 958 So. 2d 1232, 2007 Miss. LEXIS 361 (Miss. 2007).

Where the record showed the parties had been married almost 20 years and that the wife had primarily worked at a few part-time jobs, in addition to raising two children, the appellate court held: (1) as to the husband's part ownership in the business, the chancellor was within his discretion in finding that there was no goodwill, because said air conditioning business had numerous skilled employees, the husband was not an essential, irreplaceable part of said business, and the business would have operated normally if the husband left the business; (2) even though the husband was granted primary physical custody of the parties' minor child, the award of child support to the wife was not improper based on the criteria for overcoming the presumption that the guidelines were appropriate; (3) the award of periodic alimony to the wife was proper given the length of the marriage, the fact that the parties had enjoyed a high standard of living, and that the wife had very little education or work experience; and (4) the wife's acts of infidelity which occurred while the parties were separated was not a ground for denying alimony. Rush v. Rush, 932 So. 2d 800 (Miss. Ct. App. 2005), affirmed in part and reversed in part by 932 So. 2d 794, 2006 Miss. LEXIS 354 (Miss. 2006).

Chancellor's award of $ 824 a month in child support to the wife in a divorce action was exactly the 20 percent of the husband's income called for by the child support guidelines set forth in Miss. Code Ann. § 43-19-101, and was not excessive; as the award was in accordance with the guidelines, the chancellor was not required to make specific findings justifying the award. Gable v. Gable, 846 So. 2d 296 (Miss. Ct. App. 2003).

Because the husband had an adjusted gross income of more than $ 50,000, the child support guidelines did not apply; therefore, the trial court was not in error by deviating from the child support guidelines. Holley v. Holley, 892 So. 2d 240 (Miss. Ct. App. 2003), affirmed in part and reversed in part by, remanded in part by 892 So. 2d 183, 2004 Miss. LEXIS 1171 (Miss. 2004).

Because the husband was a doctor and had the ability to earn a substantial income, the wife had no source of income at that time other than the rehabilitative alimony, and the children had special needs which the chancellor deemed to include private school tuition, the supreme court found that those reasons meet the criteria set out in Miss. Code Ann. § 43-19-103(f), (h) and the chancellor properly found special circumstances existed that necessitated a variance from the statutory guidelines in setting the husband's obligation of child support. Hensarling v. Hensarling, 824 So. 2d 583 (Miss. 2002).

Where the court made no specific findings as to the husband's income and offered no reason as to why the child support award exceeded the amount suggested by the statutory guidelines based on what he reported as his adjusted gross income, the judgment would be vacated and remanded for specific findings as to the husband's income and expenses. Gray v. Gray, 745 So. 2d 234 (Miss. 1999).

Health, transportation, and college expenses are not included in determining the amount of support under the guidelines, although such extra obligations could well be considered for a downward departure from the guidelines under this section. Kilgore v. Fuller, 741 So. 2d 351 (Miss. Ct. App. 1999).

A $350 per month award to be paid by a father for the support of his 3 children was manifestly erroneous where the father's adjusted gross income based on his salary, which was his only significant and reliable source of income, was approximately $2,350 per month, the guidelines set forth in § 99-19-101 suggested that he should pay $495 per month in child support, and the chancellor failed to make a specific finding on the record that application of the statutory guidelines would be unjust or inappropriate. Draper v. Draper, 658 So. 2d 866 (Miss. 1995).

A chancellor did not abuse his discretion in ordering a wife to pay child support in the amount of $224.00 per month for the support of her minor son, even if the award exceeded the statutory guideline for the support of one child, where the record showed that the wife would be able to support herself as well as to pay child support. Smith v. Smith, 614 So. 2d 394 (Miss. 1993).

A chancellor's departure from the guidelines set forth in § 43-19-101 in determining an appropriate amount of child support was not error where the chancellor followed the statutory method of rebutting the presumption that 26 percent of the father's adjusted gross income was the appropriate amount of child support, and the record included a written finding, as required by § 43-19-103, that the guidelines were inappropriate in that particular case. McEachern v. McEachern, 605 So. 2d 809 (Miss. 1992).

2. Medical expenses.

In the father's petition to clarify his child support obligations, the chancellor's finding that counseling for his sons was not medically necessary was appropriate pursuant to Miss. Code Ann. § 43-19-103(a) because the boys had only one session and the doctor did not order any follow up treatment. Wilkerson v. Wilkerson, 955 So. 2d 903 (Miss. Ct. App. 2007).

The trial court did not err in deviating from the guidelines by awarding $500 per month in child support, rather than the $485 per month called for by the guidelines, where the court found that the upward deviation was appropriate because of unusual medical expenses for the children at issue. Grant v. Grant, 765 So. 2d 1263 (Miss. 2000).

3. Education expenses.

Husband, as a skilled medical professional, had the ability to earn a substantial income, whereas at this time, the wife did not, and the chancellor considered the child's private school tuition and enhanced educational activities; the son's extracurricular activities and the lifestyle to which the family was accustomed met the criteria in Miss. Code Ann. § 43-19-103(f), and the chancellor found it reasonable to apply the fourteen percent statutory standard to the husband's adjusted gross monthly income. Smith v. Smith, 25 So. 3d 369 (Miss. Ct. App. 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 17 (Miss. 2010).

To modify a decreed support obligation already exceeding the statutory guidelines in order to award college expenses, a chancellor is required to take into consideration the criteria set forth in Miss. Code Ann. § 43-19-103, as well as the factors contained in Brabham v. Brabham. Evans v. Evans, 994 So. 2d 765 (Miss. 2008), remanded by 75 So. 3d 1083, 2011 Miss. App. LEXIS 239 (Miss. Ct. App. 2011).

Where a father made significantly more income than a mother and the father had enrolled their child in private school before the divorce and wished the child to continue there, an award of child support exceeding the statutory guidelines was not in error. Southerland v. Southerland, 875 So. 2d 204 (Miss. 2004).

Although the trial court's order that the parties split the child's tuition expenses 70/30 was above the statutory guidelines, such a split was appropriate under the circumstances when the husband was seemingly trying to avoid paying the child's tuition, despite the trial court's earlier order as part of the divorce decree that the children be provided with college educations. Fancher v. Pell, 831 So. 2d 1137 (Miss. 2002).

The chancellor did not abuse his discretion in awarding child support of $1,000 per month, notwithstanding that the guidelines called for an award of $715 per month, where, prior to the divorce proceeding, the parties had mutually agreed to enroll their child in a private school and it was clear from the record that the chancellor considered this an extraordinary expense not contemplated in the statutory guidelines. Southerland v. Southerland, — So. 2d —, 2001 Miss. App. LEXIS 208 (Miss. Ct. App. May 22, 2001), affirmed in part and reversed in part by, remanded by 816 So. 2d 1004, 2002 Miss. LEXIS 133 (Miss. 2002).

Cited in: Riley v. Riley, 884 So. 2d 791 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR. Change in financial condition or needs of parents or children as ground for modification of decree for child support payments. 89 A.L.R.2d 7.

Excessiveness or adequacy of money awarded as child support. 27 A.L.R.4th 864.

Excessiveness or adequacy of amount of money awarded for alimony and child support combined. 27 A.L.R.4th 1038.

Application of child-support guidelines to cases of joint-, split- or similar shared-custody arrangements. 57 A.L.R.5th 389.

Am Jur. 24A Am. Jur. 2d, Divorce and Separation §§ 916, 917 et seq.

CHAPTER 20

Child Care Facilities

Mississippi Child Care Licensing Law 43-20-1
Regulations for the Promotion of Breast Feeding by Mothers of Children in Child Care Facilities 43-20-31
Family Child Care Homes 43-20-51
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MISSISSIPPI CHILD CARE LICENSING LAW

Sec.
43-20-1. Title.
43-20-3. Declaration of purpose.
43-20-5. Definitions.
43-20-7. Advisory council.
43-20-8. Powers and duties of licensing agency; parental access to facilities; obtaining criminal records and child abuse registry records of current and prospective caregivers; authority to exclude certain crimes or findings as disqualifying for licensure; immunity; fee for background check; immunization against invasive pneumococcal disease.
43-20-9. License required.
43-20-11. Application for and issuance of license.
43-20-12. Fees and penalties to be deposited in special fund.
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43-20-14. Denial, suspension, or revocation of license; hearing; appeal.
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43-20-17. Information confidential; authority to release findings of investigations into allegations of abuse.
43-20-19. Penalty.
43-20-21. Injunctive relief.

§ 43-20-1. Title.

This chapter shall be cited as the "Mississippi Child Care Licensing Law."

SOURCES: Codes, 1942, § 7129-131; Laws, 1972, ch. 528, § 1; brought forward, Laws, 1990, ch. 552, § 1, eff from and after July 1, 1990.

§ 43-20-3. Declaration of purpose.

The purpose of this chapter is to protect and promote the health and safety of the children of this state by providing for the licensing of child care facilities as defined herein so as to assure that certain minimum standards are maintained in such facilities. This policy is predicated upon the fact that a child is not capable of protecting himself, and when his parents for any reason have relinquished his care to others, there arises the probability of exposure of that child to certain risks to his health and safety which require the offsetting statutory protection of licensing.

SOURCES: Codes, 1942, § 7129-132; Laws, 1972, ch. 528, § 2; Laws, 1990, ch. 552, § 2, eff from and after July 1, 1990.

Cross References — Power of the State Board of Health to establish programs concerning child care licensure, see § 41-3-15.

RESEARCH REFERENCES

ALR. Children's day-care use as violation of restrictive covenant. 29 A.L.R.4th 730.

§ 43-20-5. Definitions.

When used in this chapter, the following words shall have the following meanings:

(a) "Child care facility" means a place that provides shelter and personal care for six (6) or more children who are not related within the third degree computed according to the civil law to the operator and who are under thirteen (13) years of age, for any part of the twenty-four-hour day, whether that place is organized or operated for profit or not. The term "child care facility" includes day nurseries, day care centers and any other facility that falls within the scope of the definitions set forth in this paragraph, regardless of auspices. Exemptions from the provisions of this chapter include:

(i) Child care facilities that operate for no more than two (2) days a week, whose primary purpose is to provide respite for the caregiver or temporary care during other scheduled or related activities and organized programs that operate for three (3) or fewer weeks per year such as, but not limited to, Vacation Bible Schools and scout day camps.

(ii) Any child residential home as defined in, and in compliance with the provisions of, Section 43-16-3(b) et seq.

(iii)1. Any elementary, including kindergarten, and/or secondary school system, accredited by the Mississippi State Department of Education, the Southern Association of Colleges and Schools, the Mississippi Private School Education Association, the American Association of Christian Schools, the Association of Christian Schools International, a school affiliated with Accelerated Christian Education, Inc., and any Head Start program operating in conjunction with an elementary school system, whether it is public, private or parochial, whose primary purpose is a structured school or school readiness program.

2. Accreditation, for the purpose of exemption from the provisions of this chapter, means: a. receipt by any school or school system of full accreditation from an accrediting entity listed in item 1 of this subparagraph (iii), or b. proof of application by the school or school system for accreditation status from the accrediting entity. Proof of application for accreditation status shall include, but not be limited to, a copy of the applicant's completed application for accreditation filed with the licensing agency and a letter or other authenticating documentation from a

signatory authority with the accrediting entity that the application for accreditation has been received and that the applicant is currently under consideration or review for full accreditation status by the accrediting entity. An exemption for a nonaccredited applicant under this item 2 shall be for a maximum of one (1) year from the receipt date by the licensing agency of the completed documentation for proof of application for accreditation status. Failure to receive full accreditation by the end of the one-year exemption period for a nonaccredited applicant shall result in the nonaccredited applicant no longer remaining exempt from the provisions of this chapter at the end of the one-year period. However, if full accreditation is not received by the end of the one-year exemption period, the State Board of Health, in its discretion, may extend the exemption period for any nonaccredited applicant for periods of six (6) months, with the total extension not to exceed one (1) year. During any such extension periods, the board shall have the authority to enforce child care facility licensure provisions relating to the health and safety of the children in the school or school system. If a nonaccredited applicant fails to receive full accreditation by the end of all extended exemption periods, the applicant shall no longer remain exempt from the provisions of this chapter at the end of the extended exemption periods.

(iv) Any membership organization affiliated with a national organization that charges only a nominal annual membership fee, does not receive monthly, weekly or daily payments for services, and is certified by its national association as being in compliance with the association's minimum standards and procedures including, but not limited to, the Boys and Girls Club of America, and the YMCA.

(v) Any family child care home as defined in Section 43-20-53(a) et seq.

All other preschool child care programs and/or extended day school programs must meet requirements set forth in this chapter. Any entity exempt from the requirements to be licensed but voluntarily chooses to obtain a license is subject to all provisions of this chapter.

(b) "Health" means that condition of being sound in mind and body and encompasses an individual's physical, mental and emotional welfare.

(c) "Safety" means that condition of being protected from hurt, injury or loss.

(d) "Person" means any person, firm, partnership, corporation or association.

(e) "Operator" means any person, acting individually or jointly with another person or persons, who establishes, owns, operates, conducts or maintains a child care facility. The child care facility license shall be issued in the name of the operator, or, if there is more than one (1) operator, in the name of one (1) of the operators. If there is more than one (1) operator, all statutory and regulatory provisions concerning the background checks of operators shall be equally applied to all operators of a facility including, but not limited to, a spouse who jointly owns, operates or maintains the child care facility regardless of which particular person is named on the license.

(f) "Personal care" means assistance rendered by personnel of the child care facility in performing one or more of the activities of daily living which includes, but is not limited to, the feeding, personal grooming, supervising and dressing of children placed in the child care facility.

(g) "Licensing agency" means the Mississippi State Department of Health.

(h) "Caregiver" means any person who provides direct care, supervision or guidance to children in a child care facility, regardless of title or occupation.

SOURCES: Codes, 1942, § 7129-133; Laws, 1972, ch. 528, § 3; Laws, 1983, ch. 522, § 39; Laws, 1986, ch. 371, § 6; Laws, 1990, ch. 552, § 3; Laws, 1992, ch. 374, § 1; Laws, 2001, ch. 396, § 1; Laws, 2003, ch. 449, § 1; Laws, 2004, ch. 579, § 1; Laws, 2006, ch. 517, § 1; Laws, 2008, ch. 495, § 1, eff from and after July 1, 2008.

Cross References — Child care facility as defined in this section not a child residential home for purposes of Child Residential Home Notification Act, see § 43-16-3.

ATTORNEY GENERAL OPINIONS

"Extended preschool" programs serving 2, 3 and 4 year olds are not exempt from Child Care Licensure requirements. Herring, Oct. 16, 1990, A.G. Op. #90-0732.

Legislature did not intend to impose child care regulations on youth camps; passage of Youth Camp Safety and Health Law indicates desire by Legislature to regulate youth camps under Youth Camp Safety and Health Law and to impose more restrictive and inappropriate child care regulations on youth camps would be unreasonable and illogical construction of statute. Herring Sept. 3, 1993, A.G. Op. #93-0479.

Certain youth camps could qualify as employers within meaning to Sex Offense Criminal History Record Information Act and record check could be required as prerequisite to licensure under Youth Camp Safety and Health Act. Herring Sept. 3, 1993, A.G. Op. #93-0479.

§ 43-20-7. Advisory council.

(1) There is hereby created an advisory council which shall be appointed by the State Health Officer, who shall serve at the pleasure of the State Health Officer.

(2) The advisory council shall consist of twelve (12) persons, six (6) of whom shall be licensed child care providers, and six (6) of whom shall represent child care professional organizations, child advocacy groups, child care associations or state agencies which provide child care funding, education or services. No more than four (4) members shall be appointed from any one (1) state Supreme Court district.

(3) It shall be the duty of the advisory council to assist and advise the licensing agency in the development of regulations governing the licensure and regulation of child care facilities and to advise the licensing agency on matters

relative to the administration and interpretation of the provisions of this chapter.

(4) Members of the advisory council shall be reimbursed for mileage and expenses as is authorized by law.

SOURCES: Codes, 1942, § 7129-134; Laws, 1972, ch. 528, § 4; Laws, 1983, ch. 522, § 40; Laws, 1990, ch. 552, § 4; Laws, 2000, ch. 415, § 1; Laws, 2008, ch. 495, § 2, eff from and after July 1, 2008.

Cross References — Traveling expenses of state officers and employees, see § 25-3-41.

Advisory council's duties as to family child care homes, see § 43-20-55.

§ 43-20-8. Powers and duties of licensing agency; parental access to facilities; obtaining criminal records and child abuse registry records of current and prospective caregivers; authority to exclude certain crimes or findings as disqualifying for licensure; immunity; fee for background check; immunization against invasive pneumococcal disease.

(1) The licensing agency shall have powers and duties as set forth below, in addition to other duties prescribed under this chapter:

(a) Promulgate rules and regulations concerning the licensing and regulation of child care facilities as defined in Section 43-20-5;

(b) Have the authority to issue, deny, suspend, revoke, restrict or otherwise take disciplinary action against licensees as provided for in this chapter;

(c) Set and collect fees and penalties as provided for in this chapter; and

(d) Have such other powers as may be required to carry out the provisions of this chapter.

(2) Child care facilities shall assure that parents have welcome access to the child care facility at all times and shall comply with the provisions of Chapter 520, Laws of 2006.

(3) Each child care facility shall develop and maintain a current list of contact persons for each child provided care by that facility. An agreement may be made between the child care facility and the child's parent, guardian or contact person at the time of registration to inform the parent, guardian or contact person if the child does not arrive at the facility within a reasonable time.

(4) Child care facilities shall require that, for any current or prospective caregiver, all criminal records, background and sex offender registry checks and current child abuse registry checks are obtained. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(5) The licensing agency shall require to be performed a criminal records background check and a child abuse registry check for all operators of a child care facility and any person living in a residence used for child care. The Department of Human Services shall have the authority to disclose to the State Department of Health any potential applicant whose name is listed on the Child Abuse Central Registry or has a pending administrative review. That information shall remain confidential by all parties. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(6) The licensing agency shall have the authority to exclude a particular crime or crimes or a substantiated finding of child abuse and/or neglect as disqualifying individuals or entities for prospective or current employment or licensure.

(7) The licensing agency and its agents, officers, employees, attorneys and representatives shall not be held civilly liable for any findings, recommendations or actions taken under this section.

(8) All fees incurred in compliance with this section shall be borne by the child care facility. The licensing agency is authorized to charge a fee that includes the amount required by the Federal Bureau of Investigation for the national criminal history record check in compliance with the Child Protection Act of 1993, as amended, and any necessary costs incurred by the licensing agency for the handling and administration of the criminal history background checks.

(9) From and after January 1, 2008, the State Board of Health shall develop regulations to ensure that all children enrolled or enrolling in a state licensed child care center receive age-appropriate immunization against invasive pneumococcal disease as recommended by the Advisory Committee on immunization practices of the Centers for Disease Control and Prevention. The State Board of Health shall include, within its regulations, protocols for children under the age of twenty-four (24) months to catch up on missed doses. If the State Board of Health has adopted regulations before January 1, 2008, that would otherwise meet the requirements of this subsection, then this subsection shall stand repealed on January 1, 2008.

SOURCES: Laws, 1990, ch. 552, § 5; Laws, 1996, ch. 479, § 1; Laws, 2000, ch. 415, § 2; Laws, 2000, ch. 499, § 26; Laws, 2003, ch. 554, § 1; Laws, 2004, ch. 579, § 2; Laws, 2005, ch. 450, § 5; Laws, 2006, ch. 520, § 13; Laws, 2007, ch. 418, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note — Section 2 of ch. 415, Laws of 2000, effective July 1, 2000, amended this section. Section 26 of ch. 499, Laws of 2000, effective July 1, 2000, amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and

Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 29, 2000, meeting of the Committee.

Cross References — Mississippi Sex Offender Registration Law, see §§ 45-33-21 et seq.

Criminal background checks for owners and employees of child residential facilities, see § 43-15-6.

Restrictions on employment by or operation of child care facilities by registered sex offenders, see §§ 43-15-301 et seq.

Federal Aspects — National Child Protection Act of 1993 appears generally as 42 USCS §§ 5119 et seq.

ATTORNEY GENERAL OPINIONS

Headstart programs, operating in conjunction with elementary schools, are exempt from licensure under the Mississippi Child Care Licensing Law and therefore from having to perform sex offense criminal history record checks and child abuse registry checks; headstart programs which are not operated in conjunction with an elementary school and those headstart programs which are operated in conjunction with elementary schools, but have chosen to be or are required to be licensed by federal entities, must make such checks. Herring, June 24, 1992, A.G. Op. #92-0457.

Information which may be relevant regarding an employee or prospective employee of a child care facility, such as the existence of a substantiated case of abuse or neglect listing that individual as a perpetrator, may be disclosed to the State Department of Health for determination of the appropriateness of the individual to be employed in a child care facility. Thompson, Jr., Feb. 13, 2002, A.G. Op. #01-0771.

The Department of Health may enact policies which allow the performance of alternative criminal background checks to comport with the intent of the statute, if, in fact, such alternative means exist and may be implemented by the Department. Thompson, Jr., May 3, 2002, A.G. Op. #02-0145.

The statute does not specifically require that the results of criminal history checks be received prior to the hiring of an individual as a child care giver at a child care facility, and no violation of the statute occurs when an individual is hired while the results of that criminal history check are pending. Thompson, Jr., May 3, 2002, A.G. Op. #02-0145.

Because the Mississippi State Department of Health is the licensing agency for child-care facilities, it has the authority to disqualify current and prospective employees from being caregivers in child-care facilities based on their criminal history. A licensed child-care facility would not have the power to override that decision by the Department. Terney, Apr. 23, 2004, A.G. Op. 04-0124.

§ 43-20-9. License required.

From and after August 1, 1972, no person acting individually or jointly with another person or persons shall establish, own, operate, conduct or maintain a child care facility in this state without a license issued under this chapter.

SOURCES: Codes, 1942, § 7129-135; Laws, 1972, ch. 528, § 5; brought forward, Laws, 1990, ch. 552, § 6, eff from and after July 1, 1990.

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured. 68 A.L.R.4th 266.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 7, 9 et seq., 45 et seq.

CJS. 53 C.J.S., Licenses §§ 6 et seq.

§ 43-20-11. Application for and issuance of license.

An application for a license under this chapter shall be made to the licensing agency upon forms provided by it, and shall contain such information as the licensing agency may reasonably require. Each application for a license shall be accompanied by a license fee not to exceed Four Hundred Dollars ($400.00), which shall be paid to the licensing agency. Licenses shall be granted to applicants upon the filing of properly completed application forms, accompanied by payment of the said license fee, and a certificate of inspection and approval by the fire department of the municipality or other political subdivision in which the facility is located, and by a certificate of inspection and approval by the health department of the county in which the facility is located, and approval by the licensing agency; except that if no fire department exists where the facility is located, the State Fire Marshal shall certify as to the inspection for safety from fire hazards. Said fire, county health department and licensing agency inspections and approvals shall be based upon regulations promulgated by the licensing agency as approved by the State Board of Health.

Each license shall be issued only for the premises and person or persons named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

SOURCES: Codes, 1942, § 7129-136; Laws, 1972, ch. 528, § 6; Laws, 1979, ch. 445, § 8; Laws, 1986, ch. 371, § 7; Laws, 1990, ch. 552, § 7; Laws, 1991, ch. 606, § 8; Laws, 2000, ch. 415, § 3; Laws, 2008, ch. 495, § 3, eff from and after July 1, 2008.

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured. 68 A.L.R.4th 266.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 49 et seq.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 43-20-12. Fees and penalties to be deposited in special fund.

All fees collected by the State Board of Health under this chapter and any penalties collected by the board for violations of this chapter shall be deposited in a special fund hereby created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the Legislature for such purpose.

SOURCES: Laws, 1983, ch. 522, § 41; brought forward, Laws, 1990, ch. 552, § 8, eff from and after July 1, 1990.

Cross References — Requirement that state officials pay in collections to state treasury, see § 7-9-21.

§ 43-20-13. Renewal of license.

A license issued under the provisions of this chapter shall be renewed upon payment of a renewal fee not to exceed Four Hundred Dollars ($400.00) per year and upon filing by the licensee of a report upon such uniform dates and upon forms provided by the licensing agency, accompanied by a current certificate of inspection and approval by the fire department and the county health department specified in Section 43-20-11.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

SOURCES: Codes, 1942, § 7129-137; Laws, 1972, ch. 528, § 7; Laws, 1979, ch. 445, § 9; Laws, 1986, ch. 371, § 8; brought forward, Laws, 1990, ch. 552, § 9; Laws, 1991, ch. 606, § 9; Laws, 2000, ch. 415, § 4; Laws, 2008, ch. 495, § 4, eff from and after July 1, 2008.

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured. 68 A.L.R.4th 266.

§ 43-20-14. Denial, suspension, or revocation of license; hearing; appeal.

(1) The licensing agency may deny a license or refuse to renew a license for any of the reasons set forth in subsection (3) of this section.

(2) Before the licensing agency may deny or refuse to renew, the applicant or person named on the license shall be entitled to a hearing in order to show cause why the license should not be denied or should be renewed.

(3) The licensing agency may suspend, revoke or restrict the license of any child-care facility upon one or more of the following grounds:

(a) Fraud, misrepresentation or concealment of material facts;

(b) Conviction of an operator for any crime if the licensing agency finds that the act or acts for which the operator was convicted could have a detrimental effect on children cared for by any child-care facility;

(c) Violation of any of the provisions of this chapter or of the regulations governing the licensing and regulation of child-care facilities promulgated by the licensing agency;

(d) Any conduct, or failure to act, that is found or determined by the licensing agency to threaten the health or safety of children at the facility;

(e) Failure by the child-care facility to comply with the provisions of Section 43-20-8(3) regarding background checks of caregivers; and

(f) Information received by the licensing agency as a result of the criminal records background check and the child abuse registry check on all operators under Section 43-20-8.

(4) Before the licensing agency may suspend, revoke or restrict the license of any facility, any licensee affected by that decision of the licensing agency shall be entitled to a hearing in which the licensee may show cause why the license should not be suspended, revoked or restricted.

(5) Any licensee who disagrees with or is aggrieved by a decision of the Mississippi State Department of Health in regard to the denial, refusal to renew, suspension, revocation or restriction of the license of the licensee, may appeal to the chancery court of the county in which the facility is located. The appeal shall be filed no later than thirty (30) days after the licensee receives written notice of the final administrative action by the Mississippi State Department of Health as to the suspension, revocation or restriction of the license of the licensee.

SOURCES: Laws, 1978, ch. 413, § 1; Laws, 1990, ch. 552, § 10; Laws, 2000, ch. 415, § 5; Laws, 2003, ch. 554, § 2, eff from and after July 1, 2003.

RESEARCH REFERENCES

ALR. Plea of nolo contendere or non vult contendere. 89 A.L.R.2d 606.

Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured. 68 A.L.R.4th 266.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 56-63.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41-49 (revocation or suspension of licenses).

CJS. 53 C.J.S., Licenses §§ 80, 82-86, 88, 89, 91, 93-95, 97-99.

§ 43-20-15. Inspections.

The licensing agency shall make or cause to be made inspections relative to compliance with the laws and regulations governing the licensure of child care facilities. Such inspections shall be made at least once a year but additional inspections may be made as often as deemed necessary by the licensing agency.

SOURCES: Codes, 1942, § 7129-138; Laws, 1972, ch. 528, § 8; Laws, 1990, ch. 552, § 11, eff from and after July 1, 1990.

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured. 68 A.L.R.4th 266.

JUDICIAL DECISIONS

1. In general.

Where a day care provider's dispute with the Mississippi State Department of Health, the Mississippi State Board of Health, various inspectors, and other officers, concerned minute details about the licensing inspection of the provider's facility and appeared to implicate no federal rights or laws, in light of Mississippi's interest in ensuring safe day care centers, as well as the fact that the provider failed to pursue her state remedies, the federal district court abstained from hearing the provider's requests for injunctive relief. Deborah Ellis & Landscapes in Learning, Inc. v. Miss. State Dep't of Health, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 63681 (N.D. Miss. Aug. 5, 2006).

§ 43-20-17. Information confidential; authority to release findings of investigations into allegations of abuse.

Information in the possession of the licensing agency concerning the license of individual child care facilities may be disclosed to the public, except such information shall not be disclosed in such manner as to identify children or families of children cared for at a child care facility. Nothing in this section shall affect the agency's authority to release findings of investigations into allegations of abuse pursuant to either Section 43-21-353(8) or Section 43-21-257.

SOURCES: Codes, 1942, § 7129-139; Laws, 1972, ch. 528, § 9; Laws, 1990, ch. 552, § 12; Laws, 1999, ch. 329, § 4; Laws, 2000, ch. 415, § 6, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence by substituting "Section 43-21-353(8) or Section 43-21-257" for "Sections 43-21-353(8) and Section 43-21-257." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Agency records, see § 43-21-257.

Duty to inform state agencies and officials of child abuse or neglect, see § 43-21-353.

Mississippi Sex Offender Registration Law, see §§ 45-33-21 et seq.

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured. 68 A.L.R.4th 266.

§ 43-20-19. Penalty.

Any person establishing, conducting, managing or operating a child care facility without a license under this chapter after August 1, 1972, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Hundred Dollars ($100.00) for the first offense, and not more than Two Hundred Dollars ($200.00) for each subsequent offense.

SOURCES: Codes, 1942, § 7129-141; Laws, 1972, ch. 528, § 11; brought forward, Laws, 1990, ch. 552, § 13, eff from and after July 1, 1990.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 74.

CJS. 53 C.J.S., Licenses §§ 121 et seq., 125 et seq.

§ 43-20-21. Injunctive relief.

Notwithstanding the existence of any other remedy, the licensing agency may, in the manner provided by law, in termtime or in vacation, upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the licensing agency in the proceedings, maintain an action in the name of the state for an injunction or other proper remedy against any person to restrain or prevent the establishment, conduct, management or operation of a child care facility without license under this chapter, or otherwise in violation of this chapter.

SOURCES: Codes, 1942, § 7129-140; Laws, 1972, ch. 528, § 10; brought forward, Laws, 1990, ch. 552, § 14; Laws, 2012, ch. 546, § 19, eff from and after July 1, 2012.

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured. 68 A.L.R.4th 266.

REGULATIONS FOR THE PROMOTION OF BREAST FEEDING BY MOTHERS OF CHILDREN IN CHILD CARE FACILITIES

SEC.
43-20-31. Department of Health to promulgate regulations for child care facilities to promote breast-feeding by mothers of children being cared for in facility.

§ 43-20-31. Department of Health to promulgate regulations for child care facilities to promote breast-feeding by mothers of children being cared for in facility.

The Department of Health shall promulgate regulations to ensure that licensed child care facilities shall be required to comply with the following:

(a) Breast-feeding mothers, including employees, shall be provided a sanitary place that is not a toilet stall to breast-feed their children or express milk. This area shall provide an electrical outlet, comfortable chair, and nearby access to running water.

(b) A refrigerator will be made available for storage of expressed breast milk following guidelines from the American Academy of Pediatrics and Centers for Disease Control in ensuring that breast milk is properly treated to avoid waste. Universal precautions are not required in handling human milk.

(c) Staff shall be trained in the safe and proper storage and handling of human milk.

(d) Breast-feeding promotion information will be displayed in order to positively promote breast-feeding to the clients of the facility.

(e) Such other requirements as the Board of Health finds desirable or necessary to promote and protect breast-feeding.

SOURCES: Laws, 2006, ch. 520, § 11, eff from and after passage (approved Apr. 3, 2006.)

FAMILY CHILD CARE HOMES

SEC.
43-20-51. Legislative purpose.
43-20-53. Definitions.
43-20-55. Development of regulations and standards; compensation of advisory council members.
43-20-57. Persons prohibited from working or residing in family child care home; resident with disability counted as child in care; access to records of workers and volunteers in home.
43-20-59. Registration.
43-20-61. Denial, revocation, or refusal to renew certificate of registration; hearing.
43-20-63. Suspension of certificate of registration; grounds.
43-20-65. Information confidential; hearings may be closed.

§ 43-20-51. Legislative purpose.

The purpose of Sections 43-20-51 through 43-20-65 is to protect and promote the health and safety of children of this state who are cared for in family child care homes which are not required to be licensed by the state, by allowing for a voluntary registration of such homes, establishing of standards for such homes and child care providers and allowing for periodic routine inspection and mandatory inspections when warranted by complaints.

SOURCES: Laws, 1990, ch. 552, § 15, eff from and after July 1, 1990.

Editor's Note — For complete distribution of the sections affected by Laws of 1990, ch. 552, see the Statutory Tables volume, Table B, Allocation of Acts of 1990.

§ 43-20-53. Definitions.

As used in Sections 43-20-51 through 43-20-65:

(a) "Family child care home" means any residential facility occupied by the operator where five (5) or fewer children who are not related within the third degree computed according to the civil law to the provider and who are under the age of thirteen (13) years of age are provided care for any part of the 24-hour day.

(b) "Registering agency" means the Mississippi State Department of Health.

(c) "Provider" means the person responsible for the care of children.

SOURCES: Laws, 1990, ch. 552, § 16; Laws, 2000, ch. 415, § 7, eff from and after July 1, 2000.

§ 43-20-55. Development of regulations and standards; compensation of advisory council members.

The advisory council appointed by the Executive Officer of the State Department of Health under the provisions of Section 43-20-7, Mississippi Code of 1972, shall assist and advise in the development of regulations and standards governing the registration and regulation of family child care homes. Members of the council who are not public employees shall receive per diem compensation as provided under Section 25-3-69, Mississippi Code of 1972, and shall be reimbursed for mileage and expenses.

SOURCES: Laws, 1990, ch. 552, § 17, eff from and after July 1, 1990.

§ 43-20-57. Persons prohibited from working or residing in family child care home; resident with disability counted as child in care; access to records of workers and volunteers in home.

(1) No person shall knowingly maintain a family child care home if, in such family child care home, there resides, works or regularly volunteers any person who:

(a)(i) Has a felony conviction for a crime against persons;

(ii) Has a felony conviction under the Uniform Controlled Substances Act;

(iii) Has a conviction for a crime of child abuse or neglect;

(iv) Has a conviction for any sex offense as defined in Section 45-33-23, Mississippi Code of 1972; or

(v) Any other offense committed in another jurisdiction or any federal offense which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere;

(b) Has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons;

(c) Has had a child declared in a court order in this or any other state to be deprived or a child in need of care based on an allegation of physical, mental or emotional abuse or neglect or sexual abuse;

(d) Has had parental rights terminated pursuant to Section 93-15-101 et seq., Mississippi Code of 1972; or

(e) Has an infectious or contagious disease, as defined by the State Department of Health pursuant to Section 41-23-1, Mississippi Code of 1972.

(2) No person shall maintain a family child care home if such person has been found to be a disabled person in need of a guardian or conservator, or both.

(3) Any person who resides in the home and who has been found to be a disabled person in need of a guardian or conservator, or both, shall be included in the total number of children allowed in care.

(4) In accordance with the provision of this subsection (4), the State Department of Health shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information in the possession of the Mississippi Highway Safety Patrol or court of this state concerning persons working, regularly volunteering or residing in a family child care home. The department shall have access to these records for the purpose of determining whether or not the home meets the requirements of Sections 43-20-51 through 43-20-65.

(5) No family child care home or its employees shall be liable for civil damages to any person refused employment or discharged from employment by reason of such home's compliance with the provisions of this section if such home acts in good faith to comply with this section.

SOURCES: Laws, 1990, ch. 552, § 18; Laws, 2000, ch. 499, § 27, eff from and after July 1, 2000.

Editor's Note — For complete distribution of the sections affected by Laws of 1990, ch. 552, see the Statutory Tables volume, Table B, Allocation of Acts of 1990.

Cross References — Uniform Controlled Substances Law, see §§ 41-29-101.
Certification that no prohibited person is present in home, see § 43-20-59.
Mississippi Sex Offender Registration Law, see §§ 45-33-21 et seq.

§ 43-20-59. Registration.

(1) Any person maintaining a family child care home may register such home with the State Department of Health on forms provided by the department.

(2) A certificate of registration shall be issued to the applicant for registration who (a) attests to the safety of the home for the care of children, (b) submits a fee of Five Dollars ($5.00) payable to the department, and (c) certifies that no person described in paragraphs (a), (b), (c), (d) or (e) of Section 43-20-57(1) resides, works or volunteers in the family child care home.

(3) The department shall furnish each applicant for registration a family child care home safety evaluation form to be completed by the applicant and submitted with the registration application.

(4) The certificate of registration shall be renewed annually in the same manner provided for in this section.

(5) A certificate of registration shall be in force for one (1) year after the date of issuance unless revoked pursuant to Sections 43-20-51 through 43-20-65. The certificate shall specify that the registrant may operate a family child care home for five (5) or fewer children. This section shall not be construed to limit the right of the department to enter a registered family child

care home for the purpose of assessing compliance with Sections 43-20-51 through 43-20-65 after receiving a complaint against the registrant of such home or in conducting a periodic routine inspection.

(6) The department shall adopt rules and regulations to implement the registration provisions.

SOURCES: Laws, 1990, ch. 552, § 19, eff from and after July 1, 1990.

Editor's Note — In Laws of 1990, ch. 552, § 19, codified as 43-20-59, the phrase "paragraphs (a), (b), (c), (d) or (e) of Section 4(1)" appears in subsection (2). By direction of the Office of the Attorney General of Mississippi, 43-20-57(1) has been inserted in place of "4(1)" as the probable intent of the Legislature.

For complete distribution of the sections affected by Laws of 1990, ch. 552, see the Statutory Tables volume, Table B, Allocation of Acts of 1990.

§ 43-20-61. Denial, revocation, or refusal to renew certificate of registration; hearing.

The department may deny, revoke or refuse to renew a certificate of registration upon determination that the registrant falsified information on the application or willfully and substantially has violated Sections 43-20-51 through 43-20-65, inclusive and amendments thereto. The department shall not revoke or refuse to renew any certificate without giving notice and conducting a hearing.

SOURCES: Laws, 1990, ch. 552, § 20, eff from and after July 1, 1990.

Editor's Note — For complete distribution of the sections affected by Laws of 1990, ch. 552, see the Statutory Tables volume, Table B, Allocation of Acts of 1990.

§ 43-20-63. Suspension of certificate of registration; grounds.

The department may suspend any certificate of registration issued under the provision of Sections 43-20-51 through 43-20-65 upon any of the following grounds and in the manner provided in Sections 43-20-51 through 43-20-65:

(a) Violation by the registrant of any provision of Sections 43-20-51 through 43-20-65 or of the rules and regulations promulgated under Sections 43-20-51 through 43-20-65;

(b) Aiding, abetting or permitting the violation of any provision of Sections 43-20-51 through 43-20-65 or of the rules and regulations promulgated under Sections 43-20-51 through 43-20-65;

(c) Conduct in the operation or maintenance, or both the operation and maintenance of a family child care home which is inimical to health, morals, welfare or safety of either an individual in or receiving services from the home or the people of this state; and

(d) The conviction of a registrant at any time during registration of any crime under state or federal law.

The department may suspend any certificate of registration issued under the provisions of Sections 43-20-51 through 43-20-65 prior to any hearing when, in the opinion of the department, the action is necessary to protect any child in the family child care home from physical or mental abuse, abandonment or any other substantial threat to health or safety.

SOURCES: Laws, 1990, ch. 552, § 21, eff from and after July 1, 1990.

Editor's Note — For complete distribution of the sections affected by Laws of 1990, ch. 552, see the Statutory Tables volume, Table B, Allocation of Acts of 1990.

§ 43-20-65. Information confidential; hearings may be closed.

Information received by the licensing agency through filed reports, inspections or otherwise authorized under Sections 43-20-51 through 43-20-65 shall not be disclosed publicly in such manner as to identify individuals. In any hearings conducted under regulation provisions of Sections 43-20-51 through 43-20-65, the hearing officer may close the hearing to the public to prevent public disclosure of matters relating to individuals restricted by other law.

SOURCES: Laws, 1990, ch. 552, § 22, eff from and after July 1, 1990.

Editor's Note — For complete distribution of the sections affected by Laws of 1990, ch. 552, see the Statutory Tables volume, Table B, Allocation of Acts of 1990.

INFORMATION TO BE PROVIDED TO CHILD'S PARENTS OR LEGAL GUARDIANS BY CHILD CARE FACILITIES

SEC.
43-20-81. Information relative to risks associated with influenza and availability, effectiveness and modes of administration of influenza vaccines.

§ 43-20-81. Information relative to risks associated with influenza and availability, effectiveness and modes of administration of influenza vaccines.

(1) Each licensed child care facility shall, by October 1 of every year, provide each child's parent or legal guardian with information relative to the risks associated with influenza and the availability, effectiveness and modes of administration of influenza vaccines. That information shall be updated annually to include new information and shall include the following:

(a) The causes and symptoms of influenza and means by which influenza is transmitted;

(b) The infection rates of influenza in children;

(c) Information about the U.S. Centers for Disease Control and Prevention's (CDC) recommendations for routine, seasonal vaccination of all children aged six (6) months through eighteen (18) years; and

(d) Sources in which a parent or legal guardian may obtain additional information and where a child may be immunized against influenza.

(2) The State Department of Health shall develop information on influenza immunization and provide that information to each licensed child care

facility, which shall provide the information to each child's parent or legal guardian as required by subsection (1) of this section.

(3) The department shall determine the most cost-effective and efficient means of distributing the information. The department may work with public health organizations and vaccine stakeholders in developing and distributing the information.

(4) Nothing in this section shall be construed to require any licensed child care facility to provide or pay for immunizations against influenza. However, if a licensed child care facility requests assistance in providing influenza vaccine on site to children in accordance with their parent or legal guardian's approval, the department shall work with the licensed child care facility to provide advice and influenza vaccine for children who qualify for the vaccine through the federal Vaccines for Children (VFC) program.

(5) The State Board of Health shall establish by rules and regulations all guidelines and procedures for carrying out the provisions of this section.

SOURCES: Laws, 2010, ch. 342, § 1, eff from and after July 1, 2010.

Federal Aspects — Vaccines for Children (VFC) program, see 42 USCS 1396s.

CHAPTER 21

Youth Court

Funding of Salaries and Expenses of Youth Counsellors and Clerk-Reporters 43-21-1
Organization, Administration and Operation 43-21-101
Jurisdiction 43-21-151
Provisions Applicable to All Proceedings 43-21-201
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FUNDING OF SALARIES AND EXPENSES OF YOUTH COUNSELLORS AND CLERK-REPORTERS

Sec.
43-21-1 through 43-21-43. Repealed.
43-21-45. Funds for payment of salaries and expenses of youth counsellors and clerk-reporters.
43-21-47 through 43-21-55. Repealed.

§§ 43-21-1 through 43-21-43. Repealed.

Repealed by Laws, 1979, ch. 506, § 78, eff from and after July 1, 1979.

§ 43-21-1. [Laws, 1946, ch. 207, § 29]

§ 43-21-3. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 1; Laws, 1975, ch. 348]

§ 43-21-5. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 2; Laws, 1966, ch. 377, § 1; Laws, 1975, ch. 494, § 1; Laws, 1977, ch. 474, § 1]

§ 43-21-7. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 3; Laws, 1964, ch. 371, §§ 1-4; Laws, 1966, ch. 377, § 2; Laws, 1971, ch. 391, §§ 1, 2]

§ 43-21-9. [Laws, 1946, ch. 207, § 4]

§ 43-21-11. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 5; Laws, 1966, ch. 377, § 3; Laws, 1973, ch. 469, § 1; Laws, 1975, ch 494, § 2; Laws, 1977, ch. 474, § 2; Laws, 1978, ch. 471, § 1]

§ 43-21-13. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 6; Laws, 1966, ch. 377, § 4]

§ 43-21-15. [Laws, 1946, ch. 207, § 7]

§ 43-21-17. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 8; Laws, 1973, ch. 469, § 2; Laws, 1975, ch. 494, § 3]

§ 43-21-19. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 9; Laws, 1964, ch. 372, § 1; Laws, 1966, ch. 377, § 5]

§ 43-21-21. [Laws, 1946, ch. 207, § 10]

§ 43-21-23. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 11]

§ 43-21-25. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 12; Laws, 1966, ch. 377, § 6]

§ 43-21-27. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 13; Laws, 1966, ch. 377, § 7; Laws, 1973, ch. 469, § 3; Laws, 1975, ch. 494, § 4]

§ 43-21-29. [Laws, 1946, ch. 207, § 14; Laws, 1960, ch. 281; Laws, 1964, ch. 373; Laws, 1973, ch. 330, § 1; Laws, 1977, ch. 406]

§ 43-21-31. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 15]

§ 43-21-33. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 16; Laws, 1958, ch. 236; Laws, 1966, ch. 377, § 8; Laws, 1973, ch. 488, § 1]

§§ 43-21-35 through 43-21-39. [Laws, 1946, ch. 207, §§ 17-19]

§ 43-21-41. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 20]

§ 43-21-43. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 21]

Editor's Note — Former § 43-21-1 gave to the chapter the short title, "Youth Court Law."

Former § 43-21-3 created a youth court division in each county court and where there is no county court, in the chancery court.

Former § 43-21-5 defined terms used in The Youth Court Law.

Former § 43-21-7 dealt with the jurisdiction of The Youth Court.

Former § 43-21-9 related to the continued retention of jurisdiction by the youth court, once attached, over the person of a child until he attains age twenty (20).

Former § 43-21-11 related to how proceedings are instituted in youth court.

Former § 43-21-13 related to summons and the service thereof, mailed notice in lieu of service of summons, and custody and detention of the child involved.

Former § 43-21-15 provided for contempt proceedings against one failing, without reasonable cause, to obey a summons from youth court, and for the issuance of a warrant under certain circumstances.

Former § 43-21-17 dealt with the nature and conduct of youth court hearings and provided for the right of counsel.

Former § 43-21-19 related to adjudications of youth court, placement of children, status of child, disclosure of information from records of youthful offender, and the publication of names of delinquent children.

Former § 43-21-21 related to the obligation to pay for the support of a child committed to a custodial person or agency other than a parent, guardian or state training or reform school, and provided for contempt proceedings against a parent or guardian refusing to pay.

Former § 43-21-23 permitted physical and mental examinations of children coming within the jurisdiction of the youth court; required the order of commitment to an institution or agency to be accompanied by a transcript of the records in the case; dealt with the disposition of tubercular, feeble-minded or insane children; and dealt with the conveyance of children committed to institutions or agencies.

Former § 43-21-25 authorized the youth court to order the parent, guardian or others found to be responsible for the neglect, delinquency or battering of a child to do or omit to do anything, as found by the judge to be in the child's best interest, under pain of punishment for contempt for violation.

Former § 43-21-27 made it a misdemeanor to contribute to the neglect or delinquency or battering of a child, and provided a penalty. The section also dealt with the testimony of examining physicians.

Former § 43-21-29 authorized the judge of a chancery court serving as youth court to appoint a referee to handle youth court cases, and dealt with the powers, authority and compensation of referees.

Former § 43-21-31 authorized the transfer of felony cases to other appropriate courts, except that exclusive jurisdiction of certain cases was given to the circuit court.

Former § 43-21-33 related to the transfer of misdemeanor cases to youth court from other courts, unless prosecution was permitted by youth court.

Former § 43-21-35 provided that no child under age thirteen (13) could be prosecuted criminally, and gave the youth court exclusive jurisdiction over such children.

Former § 43-21-37 required the circuit court judge to charge the grand jury and officers regarding the Youth Court Law.

Former § 43-21-39 granted the circuit court judge discretionary authority to commit a child convicted under the Youth Court Law to a state institution, to the county jail for not more than one (1) year, or to suspend sentence and place the child on probation; also to change custody of the child, to terminate the court's own jurisdiction over the child, and to remand proceedings to the youth court.

Former § 43-21-41 related to the title of the youth court and of the youth court clerk, and provided for the keeping of records and proceedings of the youth court.

Former § 43-21-43 related to youth counsellors, their appointment or designation, function and compensation.

§ 43-21-45. Funds for payment of salaries and expenses of youth counsellors and clerk-reporters.

In any Class 1 county having a total population in excess of eighty thousand (80,000) according to the 1950 census and having a total assessed valuation in excess of Forty-eight Million Dollars ($48,000,000.00), and in which there is both a youth court and a federal military base or encampment; and in any Class 1 county having a total population in excess of fifty-two thousand seven hundred twenty (52,720) in the 1960 federal decennial census and in which there is located both a state-supported university and a Mississippi National Guard Camp, the board of supervisors of any such county may, in its discretion, set aside, appropriate and expend moneys from the general fund to be used in the payment of salaries and/or travel expenses of a youth counsellor, or counsellors, and the salary of a clerk-reporter of the youth court of such county, and such funds shall be expended for no other purpose.

SOURCES: Codes, 1942, § 7185-21.5; Laws, 1956, ch. 207, §§ 1-3; Laws, 1968, ch. 371, § 1; Laws, 1986, ch. 400, § 28, eff from and after October 1, 1986.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

§§ 43-21-47 through 43-21-55. Repealed.

Repealed by Law, 1979, ch. 506, § 78, eff from and after July 1, 1979.

§ 43-21-47. [Laws, 1946, ch. 207, § 22]
§ 43-21-49. [Laws, 1946, ch. 207, § 23; Laws, 1968, ch. 361, § 68]
§ 43-21-51. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 24]
§ 43-21-53. [Laws, 1940, ch. 300; Laws, 1946, ch. 207, § 25]
§ 43-21-55. [Laws, 1946, ch. 207, § 26]

Editor's Note — Former § 43-21-47 made it the duty of public officials to cooperate with the youth court and authorized the court to solicit the cooperation of private child welfare organizations.

Former § 43-21-49 dealt with costs and fees in youth court.

Former § 43-21-51 dealt with appeals from the youth court.

Former § 43-21-53 provided that the Youth Court Law would not abridge chancery court jurisdiction over certain specified other matters relating to minors.

Former § 43-21-55 called for a liberal construction of the Youth Court Law and set out its purpose.

ORGANIZATION, ADMINISTRATION AND OPERATION

SEC.
43-21-101. Short title.
43-21-103. Construction and purpose.
43-21-105. Definitions.
43-21-107. Establishment clause.
43-21-109. Youth court facilities.
43-21-111. Referee.
43-21-113. Special judge.
43-21-115. Intake unit.
43-21-117. Youth court prosecutor.
43-21-119. Youth court personnel.
43-21-121. Guardian ad litem.
43-21-123. Expenditures by the youth court.
43-21-125. Council of youth court judges.
43-21-127. Cooperation.

§ 43-21-101. Short title.

This chapter shall be cited as the "Youth Court Law."

SOURCES: Laws, 1979, ch. 506, § 1, eff from and after July 1, 1979.

Editor's Note — Laws of 1979, ch. 506, §§ 76, 77, 79, effective from and after July 1, 1979, provide as follows:

"SECTION 76. Codification. The Attorney General of the State of Mississippi is hereby directed to contact those persons responsible for the codification of laws into the Mississippi Code of 1972, and the assigning of code section numbers thereto in order to ensure that section 75 of this act is included with Chapter 5, Title 97, Mississippi Code of 1972. Further, it is the intent of the Legislature that sections 1 through 69 and sections 71 through 74 be codified as Chapter 21, Title 43, Mississippi Code of 1972.

"SECTION 77. Article numbers and headings; section headings. The article numbers and headings and the section headings appearing in this act are for reference purposes and are not a part of this act.

"SECTION 79. This act shall apply only to offenses committed after the effective date of this act."

Cross References — Effect of Department of Youth Services Law (Ch. 27 of Title 43) on this chapter, see § 43-27-33.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. In general.

Nowhere did the Youth Court Act, Miss. Code Ann. § 43-21-101 et seq., provide for it taking jurisdiction over a case involving exclusively child support, contempt, and modification issues; thus, where the family court had adjudicated the father as the natural father of the mother's child, and set child support and visitation, but subsequently, the family court was abolished, in a later modification action, the appellate court reversed the youth court on the issue of jurisdiction, holding that the matter had to be transferred to the chancery court. Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003).

To extent defendant referee of Youth Court failed to have record made of Youth Court proceeding for allegations of abuse of child, allegedly abused child was deprived of property interest to which she was entitled under Fourteenth Amendment. In addition, while referee did appoint guardian ad litem for child, he failed to insure that her interests were adequately protected by such representation and thus effectively denied her right to present evidence on her behalf, as established under state law, and deprived her of a protected property interest in that respect as well. Appropriate remedy for violation was to enjoin referee to hold new hearing in full conformity with statutory and constitutional requirements. Chrissy F. ex rel. Medley v. Mississippi Dep't of Pub. Welfare, 780 F. Supp. 1104 (S.D. Miss. 1991), aff'd in part, rev'd on other grounds, 995 F.2d 595 (5th Cir. 1993), reh'g denied, 3 F.3d 441 (5th Cir. 1993), cert. denied, 510 U.S. 1214, 114 S. Ct. 1336, 127 L. Ed. 2d 684 (1994).

Defense counsel's failure to inform state trial court of sentencing alternatives under state Youth Court law (Miss Code Ann. §§ 43-21-101 et seq.) for minor convicted of murder, constituted ineffective assistance of counsel requiring grant of writ of habeas corpus for inmate's release unless inmate is resentenced, however, new trial to remedy trial counsel's failure to inform trial court of sentencing alternatives is not required. Burley v. Cabana, 818 F.2d 414 (5th Cir. 1987).

In a delinquency proceeding an error in citing the incorrect section of the Youth Court Act, § 43-21-1 [repealed], did not vitiate the order adjudicating a boy to be a delinquent child or deny the Youth Court jurisdiction of the matter, where § 43-21-1 [repealed] had been repealed and superseded by § 43-21-101 which set out and accomplished the same purpose. In re J.E.J., 419 So. 2d 1032 (Miss. 1982).

RESEARCH REFERENCES

ALR. Treatment of juvenile alleged to have violated law of United States under Federal Juvenile Delinquency Act (18 USCS §§ 5031-5042). 58 A.L.R. Fed. 232.

Treatment, under Federal Juvenile Delinquency Act (18 USCS §§ 5031-5042), of juvenile alleged to have violated law of United States. 137 A.L.R. Fed. 481.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 1 et seq.

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue — Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

1987 Mississippi Supreme Court Review, Youth Court Act. 57 Miss. L. J. 515, August, 1987.

Practice References. Representing the Child Client (Matthew Bender).

§ 43-21-103. Construction and purpose.

This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable and productive citizen, and that each such child shall receive such care, guidance and control, preferably in such child's own home as is conducive toward that end and is in the state's and the child's best interest. It is the public policy of this state that the parents of each child shall be primarily responsible for the care, support, education and welfare of such children; however, when it is necessary that a child be removed from the control of such child's parents, the youth court shall secure proper care for such child.

SOURCES: Laws, 1979, ch. 506, § 2; Laws, 1980, ch. 550, § 1; Laws, 1989, ch. 441, § 1, eff from and after July 1, 1989.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-4. [Reserved for future use].
4. Miscellaneous.

II. Under Former Law.

5. In general.

I. Under Current Law.

1. In general.

Trial court properly granted a natural father's petition for custody modification, as the children's foster mother's unjustified refusal to allow the father visitation or telephone contact was a material change in circumstances adverse to the children. Barnett v. Oathout, 883 So. 2d 563 (Miss. 2004).

Contrary to a foster mother's claims, in changing custody from her to the children's natural father, the trial court did not rely on the natural parent presumption, but imposed the burden on the father to show a material change in circumstances, which was the appropriate standard. Barnett v. Oathout, 883 So. 2d 563 (Miss. 2004).

Nowhere did the Youth Court Act, Miss. Code Ann. § 43-21-101 et seq., provide for it taking jurisdiction over a case involving exclusively child support, contempt, and modification issues; thus, where the family court had adjudicated the father as the natural father of the mother's child, and set child support and visitation, but subsequently, the family court was abolished, in a later modification action, the appellate court reversed the youth court on the issue of jurisdiction, holding that the matter had to be transferred to the chancery court. Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003).

In a hearing on a mother's petition to restore custody of her 2 children, who had been adjudicated neglected and placed in foster care, the applicable standard for the chancellor's consideration was whether there was "a material change in circumstances as to custody that would benefit and be for the best interest of the children"; the focus does not change in custody matters where it is not one parent vying against the other for custody of their child, but rather, the Department of Human Services seeking to retain custody of a neglected or abused child rather than have the child returned to a parent. Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

The placement of minors in a detention center subjected the minors to the jurisdiction of the youth court pursuant to § 43-21-103, which provides that "when a child is removed from the control of his parents, the youth court shall secure proper care for him", and, therefore, it was incumbent upon the court to insure that the residents of the center received treatment in accordance with approval by the state. In re M.I., 519 So. 2d 433 (Miss. 1988).

2.-4. [Reserved for future use].

4. Miscellaneous.

In a case in which a mother appealed a youth court's adjudication that she had neglected her two minor children and had placed the children in the legal custody of the Department of Human Services (DHS), the facts supported the youth court's finding that, at minimum, the children were not being provided the proper and necessary care or support or other care necessary for their well-being. The youth court was presented with conflicting testimony about the mother's care and support for her children, and based on the mother's alarming actions and statements that she would turn the children over to DHS, it could not be concluded with confidence that the youth court judge's decision was manifestly wrong. S. v. State, 47 So. 3d 715 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 606 (Miss. 2010).

II. Under Former Law.

5. In general.

This section [Code 1942, § 7185-27] is indicative that a child found to be neglected may not be committed to a state training school. In re Slay, 245 Miss. 294, 147 So. 2d 299 (1962).

ATTORNEY GENERAL OPINIONS

State law does not require that only licensed social workers perform investigations of neglect and abuse. Alfonso, Jan. 7, 2004, A.G. Op. 03-0586.

RESEARCH REFERENCES

ALR. Construction and effect of statutes mandating consideration of, or creating presumptions regarding, domestic violence in awarding custody of children. 51 A.L.R.5th 241.

§ 43-21-105. Definitions.

The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:

(a) "Youth court" means the Youth Court Division.

(b) "Judge" means the judge of the Youth Court Division.

(c) "Designee" means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement to be his designee.

(d) "Child" and "youth" are synonymous, and each means a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a "child" or "youth" for the purposes of this chapter.

(e) "Parent" means the father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted.

(f) "Guardian" means a court-appointed guardian of the person of a child.

(g) "Custodian" means any person having the present care or custody of a child whether such person be a parent or otherwise.

(h) "Legal custodian" means a court-appointed custodian of the child.

(i) "Delinquent child" means a child who has reached his tenth birthday and who has committed a delinquent act.

(j) "Delinquent act" is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior.

(k) "Child in need of supervision" means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:

(i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or

(ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or

(iii) Runs away from home without good cause; or

(iv) Has committed a delinquent act or acts.

(*l*) "Neglected child" means a child:

(i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or

(ii) Who is otherwise without proper care, custody, supervision or support; or

(iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or

(iv) Who, for any reason, lacks the care necessary for his health, morals or well-being.

(m) "Abused child" means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section.

(n) "Sexual abuse" means obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened.

(o) "A child in need of special care" means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.

(p) A "dependent child" means any child who is not a child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Human Services by his parent, guardian or custodian.

(q) "Custody" means the physical possession of the child by any person.

(r) "Legal custody" means the legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.

(s) "Detention" means the care of children in physically restrictive facilities.

(t) "Shelter" means care of children in physically nonrestrictive facilities.

(u) "Records involving children" means any of the following from which the child can be identified:

(i) All youth court records as defined in Section 43-21-251;

(ii) All social records as defined in Section 43-21-253;

(iii) All law enforcement records as defined in Section 43-21-255;

(iv) All agency records as defined in Section 43-21-257; and

(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

(v) "Any person responsible for care or support" means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed baby-sitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.

(w) The singular includes the plural, the plural the singular and the masculine the feminine when consistent with the intent of this chapter.

(x) "Out-of-home" setting means the temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.

(y) "Durable legal custody" means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children.

(z) "Status offense" means conduct subject to adjudication by the youth court that would not be a crime if committed by an adult.

(aa) "Financially able" means a parent or child who is ineligible for a court-appointed attorney.

SOURCES: Laws, 1979, ch. 506, § 3; Laws, 1980, ch. 550, § 2; Laws, 1985, ch. 486, § 2; Laws, 1986, ch. 416, § 1; Laws, 1991, ch. 537, § 1; Laws, 1991, ch. 539, § 7; Laws, 1993, ch. 560, § 1; Laws, 1994, ch. 591, § 5; Laws, 1994, ch. 607, § 17; Laws, 1996, ch. 323, § 1; Laws, 1998, ch. 516, § 6; Laws, 2001, ch. 358, § 1; Laws, 2005, ch. 471, § 4; Laws, 2010, ch. 476, § 73; Laws, 2013, ch. 426, § 1, eff from and after July 1, 2013.

Editor's Note — Laws of 1990, ch. 588, § 5, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions have not been printed. Text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Section 43-21-253 referred to in the section was repealed by Laws, 1997, ch. 440, § 7 effective from and after July 1, 1997.

Cross References — Mississippi School Compulsory Attendance Law, see §§ 37-13-81 et seq.

Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Administration of child welfare, generally, see §§ 43-15-1 et seq.

Suspected abuse or neglect, as defined in this section, of children in child residential home as ground to seek injunction against home, see § 43-16-21.

Aid to dependent children, see § 43-17-1 et seq.

Contributing to neglect or delinquency of child, felonious abuse or battery of child, see § 97-5-39.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

I. Under Current Law.

1. Jurisdiction — In general.
2. —Married minors.
3. —Murder excepted.
4. Parent.
5. In need of supervision.
6. Neglected.
7. Delinquent.
8. Abused.
9. Corporal punishment.
10. Miscellaneous.

II. Under Former Law.

11. In general.

I. Under Current Law.

1. Jurisdiction — In general.

Where the family court had entered an order on paternity, child support, and custody, but the family court was abolished, and father later sought to modify the order, the appellate court held the original paternity action could not have been brought in youth court. No allegations of abuse, neglect, or delinquency had been asserted, thus the matter was not one for which the youth court had been granted jurisdiction, and the matter was remanded for transfer to the chancery court. Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003).

Jurisdiction for prosecution of 15 year old for rape, offense potentially punishable by life sentence, is in circuit court, to exclusion of youth court, notwithstanding defendant's claim of interrogation in violation of Youth Court Act (§ 43-21-311). Winters v. State, 473 So. 2d 452 (Miss. 1985).

2. —Married minors.

Under § 43-21-105(d), defining "child", and § 43-21-151, the youth court jurisdictional statute, the youth court has jurisdiction over married minors under the age of 18. In re K.A.R., 441 So. 2d 108 (Miss. 1983).

3. —Murder excepted.

Murder is a crime excepted from the jurisdiction of the youth court. Thus, the circuit court had exclusive jurisdiction over a juvenile charged with murder. Boyd v. State, 523 So. 2d 1037 (Miss. 1988).

Circuit court's jurisdiction was proper where juvenile was indicted for murder, offense carrying potential life sentence, although he was ultimately convicted for aggravated assault. Johnson v. State, 512 So. 2d 1246 (Miss. 1987), cert. denied, 484 U.S. 968, 108 S. Ct. 462, 98 L. Ed. 2d 402 (1987).

4. Parent.

Foster parents did not meet the definition of "parents," and therefore, a youth court erred in assessing guardian ad litem fees against the foster parents. In the Interest of S.L.B., 122 So. 3d 1239 (Miss. Ct. App. 2013).

5. In need of supervision.

County youth court did not err in transferring what was a child custody case to the county chancery court, as the mother's allegation that her 10-month-old child was in need of supervision was insufficient to show the child was in need of supervision under the relevant statute, Miss. Code Ann. § 43-21-105(k), which required a child in need of supervision to have at least reached his seventh birthday; since there were also no allegations of abuse or neglect of the child, the case was a child custody case that fell under the jurisdiction of the county chancery court. In re L.D.M, 910 So. 2d 522 (Miss. 2005).

Children who habitually disobeyed the reasonable and lawful commands of their parents to attend school were children in need of supervision. In re M.R.L., 488 So. 2d 788 (Miss. 1986).

Record containing substantial evidence that each of three children had been habitually disobedient of reasonable and lawful commands of his or her parents and was ungovernable supported beyond a reasonable doubt the findings of the Youth Court that each was a child in need of treatment or rehabilitation. In re M.R.L., 488 So. 2d 788 (Miss. 1986).

A child may be adjudged "a child in need of supervision" and removed from parents only upon proof beyond a reasonable doubt. In re M.R.L., 488 So. 2d 788 (Miss. 1986).

6. Neglected.

Minor child could be found neglected, regardless of who the custodial parent was, if the non-custodial parent failed to remedy the situation when he or she was able to do so, and a non-custodial father, knowing that the children's mother opposed taking one of the children to see a doctor, allowed the child to remain with the mother, untreated, for 10 additional days before taking the child back to see a doctor and because of that delay, the child's bones began healing incorrectly. In addition to the medical neglect, the father was undoubtedly aware of the living conditions that his children were forced to endure, as he had lived at the very same residence in the past, he had undoubtedly witnessed the continuing nature of the living conditions when he came for his regular visits with the children, and according to the language of the "neglected child" statute, Miss. Code Ann. § 43-21-105(a), the children were neglected for purposes of Miss. Code Ann. § 93-15-103(3)(h) as much because of the father's inaction as they were because of anything the mother did or did not do. In re A.M.A., 986 So. 2d 999 (Miss. Ct. App. 2007), writ of certiorari denied by 987 So. 2d 451, 2008 Miss. LEXIS 378 (Miss. 2008), writ of certiorari denied by 2008 Miss. LEXIS 374 (Miss. July 31, 2008).

"Neglect" is not a label that is placed upon a parent, but a label that is placed upon a child, and according to Miss. Code Ann. § 43-21-105(*l*), a child may be adjudicated neglected if that child's parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or medical, surgical, or other care necessary for his well-being or who, for any reason, lacks the care necessary for his health, morals or well-being; there is nothing in the language of Miss. Code Ann. § 93-15-103(3)(h), or in the language of Miss. Code Ann. § 43-21-105(*l*) that requires that an adjudication of neglect be made specifically with respect to the parent whose rights are being terminated. Indeed, the language of the neglect statute defines a "neglected child" — not a "neglecting parent" — and defines a "neglected child" in such a way that both parents have the responsibility to insure that a child is not being neglected, regardless of who the custodial parent is; in other words, if a child is being neglected by the custodial parent, that child is also being neglected by the non-custodial parent if that parent fails to remedy the situation when he or she is able to do so. In re A.M.A., 986 So. 2d 999 (Miss. Ct. App. 2007), writ of certiorari denied by 987 So. 2d 451, 2008 Miss. LEXIS 378 (Miss. 2008), writ of certiorari denied by 2008 Miss. LEXIS 374 (Miss. July 31, 2008).

The siblings of a child who had been sexually abused by the children's father were neglected and abused minor children within the meaning of the Youth Court Act by virtue of the fact that their sister was abused. An order enjoining the father from contact with the siblings until successful completion of a child sex abuse treatment program was justified by the potential harm those children would be subjected to in light of the fact that the father had already perpetrated sexual abuse upon one of his children. E.S. v. State, 567 So. 2d 848 (Miss. 1990).

Youth Court finding that each of three children was a neglected child required reversal where the petition filed against them charged expressly that each was a child in need of supervision, but in no way charged that they were neglected children. In re M.R.L., 488 So. 2d 788 (Miss. 1986).

7. Delinquent.

Youth court judge did not abuse the judge's discretion when the judge found that a thirteen-year-old juvenile qualified as a delinquent child because the juvenile resisted arrest for disorderly conduct in that the juvenile refused to comply with a police officer's reasonable instructions to put the juvenile's hands on a patrol car, when the officer responded to a report that gunshots had been fired in the area from a car that matched the description of the car defendant was standing near, and in fact struggled with the officer and other responding officers. S.M.K.S. v. Youth Court of Union County, — So. 3d —, 2014 Miss. App. LEXIS 2 (Miss. Ct. App. Jan. 7, 2014).

Evidence supported a finding that defendant committed a delinquent act when she assaulted a teacher under Miss. Code Ann. § 97-3-7(1); defendant admitted to pushing a desk in front of the teacher, and she never claimed that this was an accident or that she did not intend to injure the teacher. In the Interest of K.G., 957 So. 2d 1050 (Miss. Ct. App. 2007).

Evidence was sufficient to adjudicate the juvenile as a delinquent, pursuant to Miss. Code Ann. § 43-21-105, when the juvenile's conduct at the high school he was attending would have been considered a breach of the peace in violation of Miss. Code Ann. § 97-53-3(1)(b) if the juvenile were an adult. In the Interest of L.C.A., 938 So. 2d 300 (Miss. Ct. App. 2006).

A high school student was properly adjudicated delinquent for having handguns on school grounds, where the guns were found in the student's locker, the student had exclusive possession of the locker and kept it under lock and key, and a second student testified that the first student had offered to sell him 2 handguns and had told him that he had the guns at school. S.C. v. State, 583 So. 2d 188 (Miss. 1991).

Defendant had been erroneously adjudicated delinquent child under Youth Court Act, for receipt of stolen property, where evidence offered by state showed only that defendant acquired possession of property from friend, and failed to prove either defendant's knowledge, or such circumstances that would constitute defendant's knowledge that property was stolen when defendant received it. In re W.B., 515 So. 2d 1175 (Miss. 1987).

8. Abused.

Judgment was properly entered for a school district in a case alleging negligence per se and other causes of action because an unsubstantiated rumor of an inappropriate relationship between a teacher and a student, without more, was insufficient to trigger a reporting duty under Miss. Code Ann. § 97-5-24; Miss. Code Ann. § 43-21-353 did not apply since the teacher was not a person responsible for the student's care or support, and there was no evidence that the type of conduct applicable to § 43-21-353 had occurred. Brown v. Pontotoc County Sch. Dist. (In re Doe), 957 So. 2d 410 (Miss. Ct. App. 2007).

Defendant charged with felonious child abuse was entitled to instruction on lesser included offense of misdemeanor child abuse where evidence adduced at trial was such that jury could have found that defendant inflicted nonaccidental physical injury on victim rather than serious bodily harm; evidence indicated that victim, who was two-year-old child of defendant's live-in girlfriend, had superficial bruises and contusions on buttocks and right thigh and that defendant admitted spanking victim with belt on buttocks but denied bruising victim's thigh. Yates v. State, 685 So. 2d 715 (Miss. 1996).

Defendant's conviction for being an accessory after the fact to her husband's crime of statutory rape by assisting her daughter in obtaining an abortion was appropriate because defendant's proposed jury instruction was legally in error; defendant, the victim's mother, was told by her daughter of the sexual abuse committed upon the victim by defendant's husband while defendant worked at a school, Miss. Code Ann. § 43-21-105(m). Sherron v. State, 959 So. 2d 30 (Miss. Ct. App. 2006), writ of certiorari denied by 958 So. 2d 1232, 2007 Miss. LEXIS 375 (Miss. 2007).

Evidence did not establish that defendant, who admittedly spanked his live-in girlfriend's two-year-old child three times with belt, inflicted serious bodily harm, rather than nonaccidental physical injury, and thus, evidence was such that reasonable jury could find defendant not guilty of child abuse but guilty of misdemeanor child abuse; evidence included examining physician's testimony that child's bruises were superficial and did not require medical treatment. Yates v. State, 685 So. 2d 715 (Miss. 1996).

Trial court's failure, in prosecution of defendant for felonious child abuse against his live-in girlfriend's two-year-old child, to give instruction on lesser included offense of misdemeanor child abuse, though error because evidence adduced at trial was such that reasonable jury could have found defendant guilty of misdemeanor child abuse but not guilty of felonious child abuse, did not require new trial, but only required remand for resentencing, where Supreme Court found that the evidence sufficiently established defendant's guilt of misdemeanor child abuse, thus obviating need for child, his family, defendant, or state to be required to endure additional expense and draining of emotions of another trial. Yates v. State, 685 So. 2d 715 (Miss. 1996).

The evidence was insufficient to support a finding that 2 minor children, who had bruises on their buttocks from a spanking with a leather strap which resulted from conversations the children's mother had with their teachers regarding the children's behavior problem, were abused children within the meaning of the Youth Court Act, where the social worker did not interview the children's teacher who had reported the behavioral problems to the mother, she did not review the children's school records, she did not interview the children's mother or step-father or examine the home environment of the children, she did not talk to the medical doctor who examined the children for evidence of child abuse, she did not look at the strap used in the discipline of the children, she did not have the children tested or evaluated by experts, and the record did not contain any medical records showing evidence of physical abuse. In re A.R., 579 So. 2d 1269 (Miss. 1991).

The evidence was sufficient to support a finding that a child had been sexually abused by her father, and was therefore an "abused child" under the Youth Court Act, where statements made by the child to a psychologist were offered into evidence, and the psychologist testified that it was his opinion that the child had been sexually abused by her father, even though the father denied engaging in any kind of sexual activity with the child and the child's mother was of the opinion that the father had not sexually abused the child. E.S. v. State, 567 So. 2d 848 (Miss. 1990).

9. Corporal punishment.

The Youth Court Act was not intended to and does not prohibit the use of corporal punishment in disciplining a child. Injury is labeled abusive only when it constitutes maltreatment. In re A.R., 579 So. 2d 1269 (Miss. 1991).

Corporal punishment injury is labeled abusive only when it constitutes maltreatment. In re A.R., 579 So. 2d 1269 (Miss. 1991).

The siblings of a child who had been sexually abused by the children's father were neglected and abused minor children within the meaning of the Youth Court Act by virtue of the fact that their sister was abused. An order enjoining the father from contact with the siblings until successful completion of a child sex abuse treatment program was justified by the potential harm those children would be subjected to in light of the fact that the father had already perpetrated sexual abuse upon one of his children. E.S. v. State, 567 So. 2d 848 (Miss. 1990).

10. Miscellaneous.

Trial judge abused his discretion in declining to recuse himself in a prosecution for aggravated assault and forcible rape of child, since he had served as county prosecuting attorney in an earlier youth-court shelter hearing regarding the child's custody as a result of the events giving rise to the criminal charges, and 1) the threshold issue in that hearing was whether the complainant was an "abused child" under Miss. Code Ann. § 43-21-105(m), which went to the heart of the issue of defendant's guilt; 2) the judge might have personal knowledge of disputed evidentiary facts concerning the criminal case due to his participation in the youth-court shelter hearing. Miller v. State, 94 So. 3d 1120 (Miss. 2012).

Granting durable legal custody to a foster parent does not give her any greater rights than those of a foster parent. Barnett v. Oathout, 883 So. 2d 563 (Miss. 2004).

While a juvenile's intentional touching and squeezing of a pregnant woman's derriere, without permission, amounted to a physical offense, this conduct did not constitute simple assault under § 97-3-7(1)(c) (now 97-3-7(1)(a)(iii)) where there was no proof of fear of imminent serious bodily harm. Thus, the juvenile's adjudication of delinquency would be reversed based on the failure to prove an essential element of the crime of simple assault. S.B. v. State, 566 So. 2d 1276 (Miss. 1990).

II. Under Former Law.

11. In general.

Being under the influence of marijuana is not a designated criminal offense under our statutes except in conjunction with the operation of a vehicle, but such conduct, when properly alleged and upon adequate proof, may be shown to endanger a child's health or to be a contributing factor to his incorrigibility or uncontrollability. Murray v. State, 310 So. 2d 919 (Miss. 1975).

A youth "who violates any state law or municipal ordinance," even though it be his first such offense, may be adjudicated to be a "delinquent child" unless some violation is by some other applicable statute excluded from the purview of Code 1942 § 7185-02(g). In re Suratt, 273 So. 2d 178 (Miss. 1973).

Nothing in Code 1942, §§ 7185-02, 7185-09, or 7185-26 requires that any child upon being formally charged for the first time with a law violation or with being delinquent must be given a suspended sentence prior to commitment into the care and custody of a state supported training school. In re Suratt, 273 So. 2d 178 (Miss. 1973).

Youth court had no jurisdiction to award custody of a minor child to her maternal aunt, where the aunt's petition for custody showed on its face that the child was not neglected, as that term is defined by statute. Griffin v. Bell, 215 So. 2d 573 (Miss. 1968).

A petition alleging that a child has been charged as "delinquent-neglected" did not bring the child within this Act. Krebs v. Stephenson, 184 So. 2d 861 (Miss. 1966).

A child may not be committed as a delinquent upon a petition alleging only that she is neglected. In re Slay, 245 Miss. 294, 147 So. 2d 299 (1962).

An allegation in general terms of delinquency does not bring a child within the operation of this act; hence it is not sufficient to allege that the child "is fast becoming uncontrollable" by its parents and "is violating the laws of the state in various ways." Sharp v. State, 240 Miss. 629, 127 So. 2d 865, 90 A.L.R.2d 284 (1961), error overruled, 240 Miss. 646, 129 So. 2d 637 (1961).

The definition of "neglected child" is sufficiently broad to apply to a minor whose mother was dead and whose father did odd jobs in various cities throughout the state, residing with a paternal aunt and left uncared for at night while the aunt was working. Walker v. State, 238 Miss. 532, 119 So. 2d 277 (1960).

Where defendant was convicted in justice court under an affidavit charging him with contributing to delinquency of his minor son by permitting and using the son to aid in loading and distributing intoxicating liquors, and defendant appealed to Circuit Court, amendment of affidavit charging defendant contributing to delinquency of son also by knowingly and intentionally permitting son to be present while defendant was loading intoxicating liquors was allowed, since the essential charge was the same in the affidavit and the amendment. Mays v. State, 216 Miss. 631, 63 So. 2d 110 (1953).

Circuit court was without jurisdiction at the time of indictment, trial, and conviction for the crime of grand larceny of a youth who was only 17 years old. Lee v. State, 214 Miss. 740, 59 So. 2d 338 (1952).

A minor child who is not supplied with necessary medical and surgical care is "neglected" so as to subject the parents to penalties imposed by law. Eggleston v. Landrum, 210 Miss. 645, 50 So. 2d 364, 23 A.L.R.2d 696 (1951).

It is not necessary that a delinquent, as defined herein, be actually convicted of a crime in order to confer jurisdiction upon the juvenile court to commit him to the proper state institution. Williams v. Bush, 199 Miss. 382, 24 So. 2d 863 (1946).

A 16-year-old boy indicted for murder is a delinquent within the meaning of this section [Code 1942, § 7193]. Parker v. State, 194 Miss. 895, 13 So. 2d 620 (1943), appeal dismissed, cert. denied, 320 U.S. 705, 64 S. Ct. 69, 88 L. Ed. 413 (1943).

Under statute providing for commitment to a state disciplinary school, "incorrigible child" is one who is incapable of being managed or corrected or disciplined in his present situation and under his present control. Mahaffey v. Mahaffey, 176 Miss. 733, 170 So. 289 (1936).

ATTORNEY GENERAL OPINIONS

As general rule, municipality would relinquish financial liability for medical cost of youth at such time as municipality surrenders custody of youth to Youth Court and court issues custody order to county for incarceration of youth in county jail. Landrum, March 1, 1990, A.G. Op. #90-0104.

A doctor's certificate is required in cases of physical discipline by a parent, guardian or custodian before a youth court judge or referee can adjudicate child abuse in such a case, but the absence of such a certificate does not prevent a social worker from conducting a normal investigation pursuant to department policies, from bringing the matter to the attention of the youth court, from requesting shelter hearings or from taking the child to a physician for an examination. Taylor, July 14, 1997, A.G. Op. #97-0394.

A "designee" acting within the auspices of the Youth Court Act will enjoy judicial immunity. Storey, Oct. 27, 2000, A.G. Op. #2000-0595.

The developer of an established subdivision may subsequently dedicate the streets in the subdivision to the county without complying with this section. However, for the streets to be considered public through dedication, the streets or dedication thereof must also be accepted by the county. Shepard, Sept. 3, 2003, A.G. Op. 03-0409.

Neither the possession of alcoholic beverages by a minor nor the possession of light wine or beer by a minor is a delinquent act as defined by subsection (j) of this section. Wiggins, Sept. 19, 2003, A.G. Op. 03-0424.

A police officer cannot be appointed to serve as a youth court designee. Thomas, May 14, 2004, A.G. Op. 04-0190.

RESEARCH REFERENCES

ALR. Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile. 5 A.L.R.4th 1211.

Defense of infancy in juvenile delinquency proceedings. 83 A.L.R.4th 1135.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 1 et seq.

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

CJS. 43 C.J.S., Infants §§ 14-23.

§ 43-21-107. Establishment clause.

(1) A youth court division is hereby created as a division of the county court of each county now or hereafter having a county court, and the county judge shall be the judge of the youth court unless another judge is named by the county judge as provided by this chapter.

(2) A youth court division is hereby created as a division of the chancery court of each county in which no county court is maintained and any chancellor within a chancery court district shall be the judge of the youth court of that county within such chancery court district unless another judge is named by the senior chancellor of the county or chancery court district as provided by this chapter.

(3) In any county where there is no county court or family court on July 1, 1979, there may be created a youth court division as a division of the municipal court in any city if the governing authorities of such city adopt a resolution to that effect. The cost of the youth court division of the municipal court shall be paid from any funds available to the municipality excluding county funds. No additional municipal youth court shall be formed after January 1, 2007.

SOURCES: Laws, 1979, ch. 506, § 4; Laws, 1982, ch. 476, § 4; Laws, 1983, ch. 334; Laws, 2007, ch. 557, § 5, eff from and after July 1, 2007.

Editor's Note — Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of Chapter 23, Family Courts, by Section 1 of Chapter 432, Laws of 1999.

Family courts were abolished on May 28, 1999, under Section 1 of Chapter 432, Laws of 1999.

Cross References — Chancery courts, see §§ 9-5-1 et seq.

County courts, see §§ 9-9-1 et seq.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. R. 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. Constitutionality.
2.-5. [Reserved for future use].

II. Under Former Law.

6. Constitutionality.
7. Construction and application.

I. Under Current Law.

1. Constitutionality.

The youth court system does not unconstitutionally usurp jurisdiction committed exclusively to the chancery court by permitting the Supreme Court to hear a direct appeal without appeal to the chancery court, even though the Mississippi Constitution provides that the chancery court shall have full jurisdiction over "minor's business." Youth courts are neither superior, equal, or inferior to other "inferior" courts; they are special courts due to the special nature of their function. Thus, the legislature had authority to vest in the youth courts "exclusive original jurisdiction in all proceedings concerning ...an abused child," and the social imperative for prompt disposition of matters affecting children is sufficiently within the police power that the legislature may streamline the appellate process. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

2.-5. [Reserved for future use].

II. Under Former Law.

6. Constitutionality.

The invalidity of the provision of Code 1942, § 7185-06 that a minor may waive issuance and service of process by voluntary appearance does not affect the rest of the statute. Sharp v. State, 240 Miss. 629, 127 So. 2d 865, 90 A.L.R.2d 284 (1961), error overruled, 240 Miss. 646, 129 So. 2d 637 (1961).

Where original and exclusive jurisdiction of all proceedings concerning delinquents or neglected children under eighteen years of age was vested in the youth court division of the chancery court or youth court division of county court, this was legitimate exercise of state's police power and did not violate § 156 of the constitution which vests original jurisdiction of felonies in the circuit courts. Wheeler v. Shoemake, 213 Miss. 374, 57 So. 2d 267 (1952).

The Youth Court Act of 1946 which vests original and exclusive jurisdiction of all proceedings concerning delinquents or neglected children under eighteen years of age in youth court division of chancery court or youth court division of county court is a reasonable classification, equal in its application to all those within the stated age limit. Wheeler v. Shoemake, 213 Miss. 374, 57 So. 2d 267 (1952).

7. Construction and application.

Where the family court had entered an order on paternity, child support, and custody, but the family court was abolished, and father later sought to modify the order, the appellate court held the original paternity action could not have been brought in youth court. No allegations of abuse, neglect, or delinquency had been asserted, thus the matter was not one for which the youth court had been granted jurisdiction, and the matter was remanded for transfer to the chancery court. Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003).

Doctrine of parens patriae does not authorize commitment of a minor to an institution except through the procedure prescribed by the Youth Act. Sharp v. State, 240 Miss. 629, 127 So. 2d 865, 90 A.L.R.2d 284 (1961), error overruled, 240 Miss. 646, 129 So. 2d 637 (1961).

RESEARCH REFERENCES

ALR. Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered. 52 A.L.R.3d 1118.

Right of bail in proceedings in juvenile courts. 53 A.L.R.3d 848.

§ 43-21-109. Youth court facilities.

Any county or municipality may separately or jointly establish and maintain detention facilities, shelter facilities, foster homes, or any other facility necessary to carry on the work of the youth court. For said purposes, the county or municipality may acquire necessary land by condemnation, by purchase or donation, may issue bonds as now provided by law for the purpose of purchasing, constructing, remodeling or maintaining such facilities; may expend necessary funds from the general fund to construct and maintain such facilities, and may employ architects to design or remodel such facilities. Such facilities may include a place for housing youth court facilities and personnel.

SOURCES: Laws, 1979, ch. 506, § 5; Laws, 1980, ch. 550, § 3, eff from and after July 1, 1980.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

ATTORNEY GENERAL OPINIONS

Section 43-21-109 allows any county or municipality to separately or jointly establish and maintain youth detention facilities and courts. Haque, December 6, 1995, A.G. Op. #95-0743.

Section 43-21-109 would authorize eminent domain proceedings to acquire land for juvenile detention facilities. Haque, February 20, 1996, A.G. Op. #96-0041.

There is no authority for a county to enter into an agreement to house prisoners from another state in the county jail. Walters, January 9, 1998, A.G. Op. #97-0832.

The Youth Court Judge may join with the board of supervisors and/or the county administrator, and the board of supervisors and county administrator may cooperate with the youth court, to provide for the administration of the youth court facilities, with the Youth Court Judge having ultimate and controlling authority over same. Yancey, November 25, 1998, A.G. Op. #98-0615.

A municipality may contribute funds to the operation of a youth court pursuant to an approved interlocal agreement, which funds may then be utilized by the board of supervisors to cover the expense of employees of the youth court. Thomas, Mar. 4, 2002, A.G. Op. #02-0095.

§ 43-21-111. Referee.

(1) In any county not having a county court or family court the judge may appoint as provided in Section 43-21-123 regular or special referees who shall be attorneys at law and members of the bar in good standing to act in cases concerning children within the jurisdiction of the youth court, and a regular referee shall hold office until removed by the judge. The requirement that regular or special referees appointed pursuant to this subsection be attorneys shall apply only to regular or special referees who were not first appointed regular or special referees prior to July 1, 1991.

(2) Any referee appointed pursuant to subsection (1) of this section shall be required to receive judicial training approved by the Mississippi Judicial

College and shall be required to receive regular annual continuing education in the field of juvenile justice. The amount of judicial training and annual continuing education which shall be satisfactory to fulfill the requirements of this section shall conform with the amount prescribed by the Rules and Regulations for Mandatory Continuing Judicial Education promulgated by the Supreme Court. The Administrative Office of Courts shall maintain a roll of referees appointed under this section, shall enforce the provisions of this subsection and shall maintain records on all such referees regarding such training. Should a referee miss two (2) consecutive training sessions sponsored or approved by the Mississippi Judicial College as required by this subsection or fail to attend one (1) such training session within six (6) months of their initial appointment as a referee, the referee shall be disqualified to serve and be immediately removed as a referee and another member of the bar shall be appointed as provided in this section.

(3) The judge may direct that hearings in any case or class of cases be conducted in the first instance by the referee. The judge may also delegate his own administrative responsibilities to the referee.

(4) All hearings authorized to be heard by a referee shall proceed in the same manner as hearings before the youth court judge. A referee shall possess all powers and perform all the duties of the youth court judge in the hearings authorized to be heard by the referee.

(5) An order entered by the referee shall be mailed immediately to all parties and their counsel. A rehearing by the judge shall be allowed if any party files a written motion for a rehearing or on the court's own motion within three (3) days after notice of referee's order. The youth court may enlarge the time for filing a motion for a rehearing for good cause shown. Any rehearing shall be upon the record of the hearing before the referee, but additional evidence may be admitted in the discretion of the judge. A motion for a rehearing shall not act as a supersedeas of the referee's order, unless the judge shall so order.

(6) The salary for the referee shall be fixed on order of the judge as provided in Section 43-21-123 and shall be paid by the county out of any available funds budgeted for the youth court by the board of supervisors.

(7) Upon request of the boards of supervisors of two (2) or more counties, the judge of the chancery court may appoint a suitable person as referee to two (2) or more counties within his district, and the payment of salary may be divided in such ratio as may be agreed upon by the boards of supervisors.

SOURCES: Laws, 1979, ch. 506, § 6; Laws, 1991, ch. 537, § 2; Laws, 1997, ch. 440, § 2; Laws, 1998, ch. 367, § 1, eff from and after July 1, 1998.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence of subsection (2). The words "Rules and Regulation" were changed to "Rules and Regulations". The Joint Committee ratified the correction at its May 20, 1998, meeting.

Editor's Note — Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of Chapter 23, Family Courts, by Section 1 of Chapter 432, Laws of 1999.

Cross References — Duties and authority of Administrative Director of Courts, see § 9-21-9.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. Adjudication of defendant as a delinquent.
2. Failure to mail order.

1. Adjudication of defendant as a delinquent.

Trial court contended that a hearing was held before the youth court referee, not a youth court judge, and that pursuant to Miss. Code Ann. § 43-21-111(5), a rehearing by the judge could be allowed if any party filed a written motion for rehearing within three days after notice of the referee's order; what was clear was that the appellate record contradicted the position taken by the trial court where the issues raised by defendant had not been addressed, there was definitely an insufficient record, and neither the referee's order nor the order of the trial court provided the appellate court with any support for the adjudication of defendant as a delinquent, and the appellate court could not say with any certainty that defendant was provided due process or that there was any evidence to support the charges against him. In the Interest of J. D. W., 881 So. 2d 929 (Miss. Ct. App. 2004).

2. Failure to mail order.

Judge's actions, involving the issuance of an ex parte temporary change of child custody order, not only constituted willful misconduct in violation of the state constitution and various canons of the code of judicial conduct, but also violated state laws and rules; the order did not conform to Miss. Code Ann. § 43-21-301(4), a need for emergency medical care was insufficient reason to award temporary custody in light of Miss. Code Ann. § 41-41-3(1)(b), and the order was not mailed to all parties as required by Miss. Code Ann. § 43-21-111(5). Miss. Comm'n on Judicial Performance v. Perdue, 853 So. 2d 85 (Miss. 2003).

ATTORNEY GENERAL OPINIONS

An attorney appointed to serve as a designee for the limited purpose of conducting a specific type of hearing under the Youth Court Act is not a referee and, therefore, is not required to undergo judicial training. Storey, Oct. 27, 2000, A.G. Op. #2000-0595.

In a youth court proceeding involving abuse and neglect cases, the guardian ad litem would be appointed by the Chancellor or by the referee depending on the authority delegated to the referee by the Chancellor. Johnson, Apr. 15, 2005, A.G. Op. 05-0062.

RESEARCH REFERENCES

ALR. Family court jurisdiction to hear contract claims. 46 A.L.R.5th 735.

§ 43-21-113. Special judge.

When a judge shall certify in writing that he is unable to serve because of illness or absence from the county or district, the judge may appoint as provided in Section 43-21-123 a special judge to serve in his stead. A special judge shall possess all the powers and perform all the duties of the regular judge. The compensation for the special judge shall be fixed on order of the judge as provided in Section 43-21-123 on the basis of a statement as to the time and expense incurred by the special judge and shall be paid by the county out of any available funds. In the case of recusal, a judge shall be selected as provided by law.

SOURCES: Laws, 1979, ch. 506, § 7; Laws, 1993, ch. 560, § 2, eff from and after July 1, 1993.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

§ 43-21-115. Intake unit.

In every youth court division the judge shall appoint as provided in Section 43-21-123 one or more persons to function as the intake unit for the youth court division. The youth court intake unit shall perform all duties specified by this chapter. If the person serving as the youth court intake unit is not already a salaried public employee, the salary for such person shall be fixed on order of the judge as provided in Section 43-21-123 and shall be paid by the county or municipality, as the case may be, out of any available funds budgeted for the youth court by the board of supervisors.

SOURCES: Laws, 1979, ch. 506, § 8; Laws, 1997, ch. 440, § 3, eff from and after July 1, 1997.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

ATTORNEY GENERAL OPINIONS

Youth Court Referee or Chancery Clerk may make recommendation to Chancellor, but it is decision of Judge who will be Youth Court Intake Officer. O'Neal Sept. 22, 1993, A.G. Op. #93-0604.

Employees of the Mississippi Department of Human Services are not prohibited from serving as the intake unit for abuse and neglect cases, but they must be appointed by the youth court judge and, as salaried public employees, must not receive additional compensation from the municipality or county. Greenlee, January 21, 1998, A.G. Op. #97-0806.

The sheriff may be designated by the Youth Court Judge as the intake unit under the statute. Yancey, November 25, 1998, A.G. Op. #98-0615.

§ 43-21-117. Youth court prosecutor.

(1) The youth court prosecutor shall represent the petitioner in all proceedings in the youth court.

(2) The county prosecuting attorney shall serve as the youth court prosecutor; however, if funds are available pursuant to Section 43-21-123, the court may designate, as provided in subsection (3) of this section, a prosecutor or prosecutors in lieu of or in addition to the county prosecuting attorney. Where there is a municipal youth court division, the city prosecutor shall serve as youth court prosecutor; provided that the district attorney may participate in transfer proceedings.

(3) The judge may designate as provided in Section 43-21-123 some suitable attorney or attorneys to serve as youth court prosecutor or prosecutors in lieu of or in conjunction with the youth court prosecutor provided in subsection (2) of this section. The designated youth court prosecutor or prosecutors shall be paid a fee or salary fixed on order of the judge as provided in Section 43-21-123 and shall be paid by the county out of any available funds budgeted for the youth court by the board of supervisors, unless the designated youth court prosecutor or prosecutors serves in a municipal youth court division, in which case he shall be paid a fee or salary fixed on order of the judge from the funds available to the municipality.

(4) All youth court prosecutors and county prosecuting attorneys who serve as youth court prosecutors shall be required to receive juvenile justice training approved by the Mississippi Attorney General's office and regular annual continuing education in the field of juvenile justice. The Mississippi Attorney General's office shall determine the amount of juvenile justice training and annual continuing education which shall be satisfactory to fulfill the requirements of this subsection. The Administrative Office of Courts shall maintain a roll of youth court prosecutors, shall enforce the provisions of this subsection and shall maintain records on all such youth court prosecutors regarding such training. Should a youth court prosecutor miss two (2) consecutive training sessions sponsored by the Mississippi Attorney General's office as required by this subsection or fail to attend one (1) such training session within six (6) months of their designation as youth court prosecutor, the youth court prosecutor shall be disqualified to serve and be immediately removed from the office of youth court prosecutor and another youth court prosecutor shall be designated.

SOURCES: Laws, 1979, ch. 506, § 9; Laws, 1980, ch. 550, § 4; Laws, 1997, ch. 440, § 4; Laws, 1998, ch. 367, § 2, eff from and after July 1, 1998.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

§ 43-21-119. Youth court personnel.

The judge or his designee shall appoint as provided in Section 43-21-123 sufficient personnel, responsible to and under the control of the youth court, to carry on the professional, clerical and other work of the youth court. The cost of these persons appointed by the youth court shall be paid as provided in Section 43-21-123 out of any available funds budgeted for the youth court by the board of supervisors.

SOURCES: Laws, 1979, ch. 506, § 10, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. In general.

Sections 43-21-119 and 43-21-123, which govern the development and implementation of the annual budget for a youth court in Mississippi, do not violate Mississippi's constitutional separation of powers doctrine with respect to youth court judges' ability to participate in the development and implementation of the budget as approved by the board of supervisors. Moore v. Board of Supvrs., 658 So. 2d 883 (Miss. 1995).

ATTORNEY GENERAL OPINIONS

Positions of directors, houseparents, counselors, guards and other administrative personnel of detention and shelter facilities are not within scope of section, which is concerned with functioning of youth court itself. Mullins, Oct. 14, 1992, A.G. Op. #92-0661.

Paperwork necessary for the filing of a petition should be done by the prosecuting attorney of the youth court. Paperwork for an informal adjustment, an adjudicatory hearing, as well as paperwork necessary for taking a juvenile into custody and disposition of a case should be done by youth court staff, hired by the judge and paid by the county, out of the court budget, as provided for in Section 43-21-119. Harkey, December 16, 1996, A.G. Op. #96-0829.

Since the duties of the school attendance officer, in addition to those required by Section 43-21-119, are assigned by the district attorney under Section 37-13-91(7), and the attendance officer is required by subsection (7) to cooperate with the court, the district attorney and the youth court judge should enter into agreement on the role the school attendance officer is to play in getting truancy cases into and through the youth court. This agreement should also include guidelines for the counseling of truant juveniles after the case has been referred to the youth court. Harkey, December 16, 1996, A.G. Op. #96-0829.

Employment of persons by the city to work with the youth court must be approved by the youth court judge. Thomas, Mar. 4, 2002, A.G. Op. #02-0095.

§ 43-21-121. Guardian ad litem.

(1) The youth court shall appoint a guardian ad litem for the child:

(a) When a child has no parent, guardian or custodian;

(b) When the youth court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;

(c) When the parent is a minor or a person of unsound mind;

(d) When the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;

(e) In every case involving an abused or neglected child which results in a judicial proceeding; or

(f) In any other instance where the youth court finds appointment of a guardian ad litem to be in the best interest of the child.

(2) The guardian ad litem shall be appointed by the court when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first.

(3) In addition to all other duties required by law, a guardian ad litem shall have the duty to protect the interest of a child for whom he has been appointed guardian ad litem. The guardian ad litem shall investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest. The guardian ad litem is not an adversary party and the court shall insure that guardians ad litem perform their duties properly and in the best interest of their wards. The guardian ad litem shall be a competent person who has no adverse interest to the minor. The court shall insure that the guardian ad litem is adequately instructed on the proper performance of his duties.

(4) The court, including a county court serving as a youth court, may appoint either a suitable attorney or a suitable layman as guardian ad litem. In cases where the court appoints a layman as guardian ad litem, the court shall also appoint an attorney to represent the child. From and after January 1, 1999, in order to be eligible for an appointment as a guardian ad litem, such attorney or layperson must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. The Mississippi Judicial College shall determine the amount of child protection and juvenile justice training which shall be satisfactory to fulfill the requirements of this section. The Administrative Office of Courts shall maintain a roll of all attorneys and laymen eligible to be appointed as a guardian ad litem under this section and shall enforce the provisions of this subsection.

(5) Upon appointment of a guardian ad litem, the youth court shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to familiarize himself with the matter, consult with counsel and prepare his participation in the cause.

(6) Upon order of the youth court, the guardian ad litem shall be paid a reasonable fee as determined by the youth court judge or referee out of the county general fund as provided under Section 43-21-123. To be eligible for such fee, the guardian ad litem shall submit an accounting of the time spent in performance of his duties to the court.

(7) The court, in its sound discretion, may appoint a volunteer trained layperson to assist children subject to the provisions of this section in addition to the appointment of a guardian ad litem.

SOURCES: Laws, 1979, ch. 506, § 11; Laws, 1980, ch. 550, § 5; Laws, 1997, ch. 440, § 5; Laws, 1998, ch. 367, § 3; Laws, 1998, ch. 516, § 9; Laws, 1999, ch. 329, § 1; Laws, 2015, ch. 493, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 3 of ch. 367, Laws of 1998, effective July 1, 1998 (approved March 16, 1998), amended this section. Section 9 of ch. 516, Laws of 1998, effective July 1, 1998 (approved March 31, 1998), also amended this section. As set out above, this section reflects the language of Section 9 of ch. 516, Laws of 1998, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2015 amendment inserted "including a county court serving as a youth court" near the beginning of the first sentence of (4).

Cross References — Appointment of guardian ad litem when charges of abuse or neglect arise in custody case, see §§ 9-5-89 and 93-5-13.

Duties and authority of Administrative Director of Courts, see § 9-21-9.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. In general.
2. Compensation of guardian.

1. In general.

In a child custody case, a guardian ad litem (GAL) did not exceed the proper role of a GAL by offering testimony, providing a written report to the court, making recommendations, discussing the views of the court-appointed counselor, filing a motion, examining witnesses, and meeting ex-parte with the chancellor, where the GAL reported on matters required by the GAL's appointment, and consistent with a GAL's duties and where the chancellor did not allow the GAL to usurp the chancellor's role as the ultimate finder of fact. McDonald v. McDonald, 39 So. 3d 868 (Miss. 2010).

In an action to modify child custody, where guardian ad litem failed to provide the court with an objective record of the evidence or make a recommendation as to whether or not a material change in circumstances had occurred; did not prepare a written report or recommendation; declined to question any witnesses during the trial; and declined to add any statements to the record other than a statement that she would leave it to the court's discretion as to whether or not there had been a material change in circumstances; she failed to comply with her statutory duties, and the case was properly remanded for the chancellor to reconsider based on the totality of the circumstances. Gainey v. Edington, 24 So. 3d 333 (Miss. Ct. App. 2009).

When appointing a guardian ad litem to represent a minor, a judge's duty to assure that the child's best interests are protected requires as a minimum that (1) he or she select a competent person to serve as guardian ad litem, (2) he or she select a person with no adverse interest to the minor, and (3) the person selected is adequately instructed on the proper performance of his or her duties. Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

In proceedings to determine custody of 2 children who had been adjudicated neglected and placed in foster care, the children were denied their due process right of representation where they were without the services of an attorney or guardian ad litem for approximately 3 years during the course of the custody proceedings. Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

Judges have the obligation to appoint a guardian ad litem to represent every minor alleged to be abused or neglected, even if a request for a guardian ad litem is not made. Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

2. Compensation of guardian.

Fee paid to the guardian ad litem was proper where the youth court recognized the complexity of the case and awarded the guardian a higher amount than what it considered reasonable for the usual case, Miss. Code Ann. § 43-21-121(6); further, the guardian failed to point to anything that indicated that the youth court's decision was unreasonable or that the court had abused its discretion as to the amount of compensation, Miss. R. Civ. P. 17(d). In the Interest of L.D.M., 872 So. 2d 655 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

If a county youth court has adopted a separate system of personnel administration, the countywide system is inapplicable to youth court employees, including employment practices; however, if the county youth court has not adopted a separate system, its employees are subject to the countywide system, including employment practices. Meadows, May 12, 2000, A.G. Op. #2000-0238.

In a youth court proceeding involving abuse and neglect cases, the guardian ad litem would be appointed by the Chancellor or by the referee depending on the authority delegated to the referee by the Chancellor. Johnson, Apr. 15, 2005, A.G. Op. 05-0062.

RESEARCH REFERENCES

Law Reviews. Best Practices in the Response to Child Abuse, 25 Miss. C. L. Rev. 73, Fall, 2005.

Practice References. Representing the Child Client (Matthew Bender).

Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions (Michie).

§ 43-21-123. Expenditures by the youth court.

Except for expenses provided by state funds and/or other monies, the board of supervisors, or the municipal governing board where there is a municipal youth court, shall adequately provide funds for the operation of the youth court division of the chancery court in conjunction with the regular chancery court budget, or the county or family courts where said courts are constituted. In preparation for said funding, on an annual basis at the time requested, the youth court judge or administrator shall prepare and submit to the board of supervisors, or the municipal governing board of the youth court wherever the youth court is a municipal court, an annual budget which will identify the number, staff position, title and amount of annual or monthly compensation of each position as well as provide for other expenditures necessary to the functioning and operation of the youth court. When the budget of the youth court or youth court judge is approved by the board of supervisors or the governing authority of the municipality, then the youth court or youth court judge may employ such persons as provided in the budget from time to time.

The board of supervisors of any county in which there is located a youth court, and the governing authority of any municipality in which there is located a municipal youth court, are each authorized to reimburse the youth court judges and other youth court employees or personnel for reasonable travel and expenses incurred in the performance of their duties and in attending educational meetings offering professional training to such persons as budgeted.

SOURCES: Laws, 1979, ch. 506, § 12; Laws, 1989, ch. 441, § 2, eff from and after July 1, 1989.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of the first paragraph. The words "approved by the board of supervisors of the governing authority of the municipality" were changed to "approved by the board of supervisors or the governing authority of the municipality". The Joint Committee ratified the correction at its May 20, 1998, meeting.

Editor's Note — Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of Chapter 23, Family Courts, by Laws of 1999, ch. 432 § 2.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. In general.

Sections 43-21-119 and 43-21-123, which govern the development and implementation of the annual budget for a youth court in Mississippi, do not violate Mississippi's constitutional separation of powers doctrine with respect to youth court judges' ability to participate in the development and implementation of the budget as approved by the board of supervisors. Moore v. Board of Supvrs., 658 So. 2d 883 (Miss. 1995).

Section 9-17-1, combined with the approval of the Youth Court budget, as mandated by §§ 43-21-123 and 19-9-96, authorized a youth court judge's hiring of a youth court administrator who performed non-judicial, administrative functions of the youth court. Nelson v. State, 656 So. 2d 318 (Miss. 1995).

ATTORNEY GENERAL OPINIONS

Judge or administrator of youth court is to submit detailed budget to Board of Administrators and upon approval of budget youth court judge, or designee, is authorized to employ persons under budget; board does not have authority to approve individuals who are employed by youth court and board of supervisors cannot appoint youth court administrator, but board can create and fund slot for youth court administrator, which can then be filled (or not filled) by appointment of youth court judge (or designee). Mullins, July 8, 1992, A.G. Op. #92-0458.

A county youth court administrator has the authority to set salaries of youth court employees that are not more than the salary for each position established in the youth court budget as approved by the county board of supervisors. Meadows, May 12, 2000, A.G. Op. #2000-0238.

Payment of an attorney legally appointed by a county youth court judge to hear all youth court cases of a contested nature for a period of 30 days is authorized but must come within the youth court budget which has been approved by the county board of supervisors. Sherard, Jan. 18, 2002, A.G. Op. #02-0014.

Employment of persons by the city to work with the youth court must be approved by the youth court judge. Thomas, Mar. 4, 2002, A.G. Op. #02-0095.

§ 43-21-125. Council of youth court judges.

(1) There shall be a Mississippi Council of Youth Court Judges which shall be the official organization of the judges having youth court jurisdiction in this state. The membership of the council shall consist of all the judges and referees of youth courts in the State of Mississippi.

(2) The Mississippi Council of Youth Court Judges is authorized to adopt and, from time to time, amend such rules, regulations or bylaws as it considers necessary to the conduct of its affairs.

(3) The council may elect officers and provide for such meetings of the council as it deems necessary. The council shall meet at least annually for the consideration of:

(a) any and all matters pertaining to the discharge of the official duties and obligations of its members; and

(b) problems that have arisen in connection with the operation of the youth courts in any county or in all counties in order to improve the administration of juvenile justice in the state.

(4) The council shall publish and submit to the governor, the chief justice of the supreme court, and the Mississippi Judicial Council an annual report of the operations which shall include financial and statistical data and may include suggestions and recommendations for legislation.

(5) The council is authorized to receive and expend any funds which may become available from the federal government to carry out any of the purposes of this chapter, and to this end the council may meet any federal requirements not contrary to state law which may be conditions precedent to receiving such federal funds.

(6) The council may cooperate with the federal government in a program for training personnel employed or preparing for employment by the youth court and may receive and expend funds from federal or state sources or from private donations for such purposes. The council may contract with public or nonprofit institutions of higher learning for the training of such personnel, may conduct short-term training courses of its own, may hire experts on a temporary basis for such purpose and may cooperate with the department of

youth services or other state departments or agencies in personnel training programs.

SOURCES: Laws, 1979, ch. 506, § 13, eff from and after July 1, 1979.

Cross References — Youth services department, generally, see §§ 43-27-2 et seq.
Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.
Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

§ 43-21-127. Cooperation.

It is hereby made the duty of every public official or department to render all assistance and cooperation within his or its jurisdictional power which may further the objects of this chapter. The youth court is authorized to seek the cooperation of all societies, organizations or agencies having for their object the protection or aid of children.

SOURCES: Laws, 1979, ch. 506, § 14, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.
Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JURISDICTION

SEC.	
43-21-151.	Jurisdiction.
43-21-153.	Powers of youth court; contempt.
43-21-155.	Venue.
43-21-157.	Transfer of jurisdiction to other courts.
43-21-159.	Transfer of cases from other courts.

§ 43-21-151. Jurisdiction.

(1) The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances:

(a) Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court;

(b) Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court; and

(c) When a charge of abuse of a child first arises in the course of a custody action between the parents of the child already pending in the chancery court and no notice of such abuse was provided prior to such chancery proceedings, the chancery court may proceed with the investigation, hearing and determination of such abuse charge as a part of its hearing and determination of the custody issue as between the parents, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings.

When a child is expelled from the public schools, the youth court shall be notified of the act of expulsion and the act or acts constituting the basis for expulsion.

(2) Jurisdiction of the child in the cause shall attach at the time of the offense and shall continue thereafter for that offense until the child's twentieth birthday, unless sooner terminated by order of the youth court. The youth court shall not have jurisdiction over offenses committed by a child on or after his eighteenth birthday.

(3) No child who has not reached his thirteenth birthday shall be held criminally responsible or criminally prosecuted for a misdemeanor or felony; however, the parent, guardian or custodian of such child may be civilly liable for any criminal acts of such child. No child under the jurisdiction of the youth court shall be held criminally responsible or criminally prosecuted by any court for any act designated as a delinquent act, unless jurisdiction is transferred to another court under Section 43-21-157.

(4) The youth court shall also have jurisdiction of offenses committed by a child which have been transferred to the youth court by an order of a circuit court of this state having original jurisdiction of the offense, as provided by Section 43-21-159.

(5) The youth court shall regulate and approve the use of teen court as provided in Section 43-21-753.

(6) Nothing in this section shall prevent the circuit court from assuming jurisdiction over a youth who has committed an act of delinquency upon a youth court's ruling that a transfer is appropriate pursuant to Section 43-21-157.

SOURCES: Laws, 1979, ch. 506, § 15; Laws, 1985, ch. 486, § 1; Laws, 1989, ch. 441, § 3; Laws, 1990, ch. 452, § 1; Laws, 1993, ch. 558, § 1; Laws, 1994, ch. 595, § 1; Laws, 1996, ch. 514, § 3; Laws, 2010, ch. 542, § 1, eff from and after July 1, 2011.

Cross References — Duty of school district superintendent to notify youth court of expulsion of student, or of any crime committed by student, see § 37-9-14.

Authority of chancery court to investigate, hear and make determinations in custody action when charge of abuse arises in course of custody action as provided in this section, see § 93-5-23.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Constitutionality.
3. Construction and application.
4. Original jurisdiction.
5.-6. [Reserved for future use].

II. Under Former Law.

7. Constitutionality.
8. Construction and application.

I. Under Current Law.

1. In general.

Evidence was insufficient to show that the attorney's conduct was a willful or contumacious violation of the Youth Court Act beyond a reasonable doubt where the record indicated that the grandmother paid the attorney for her representation of the mother and the grandmother was the attorney's client and had a right to be informed of the outcome of the custody hearing. In re Spencer, 985 So. 2d 330 (Miss. 2008), writ of certiorari denied by 555 U.S. 1046, 129 S. Ct. 629, 172 L. Ed. 2d 610, 2008 U.S. LEXIS 8600, 77 U.S.L.W. 3324 (2008).

Youth court lacked jurisdiction over defendant, a minor, because he was charged with statutory rape, Miss. Code Ann. § 97-3-65, which if committed by an adult, carried the possibility of sentencing to life imprisonment; the actual sentence defendant might receive because of his age was irrelevant, and thus the youth court was without jurisdiction to proceed. In the Interest of D.S., 943 So. 2d 1280 (Miss. 2006).

Defendant's claim that the youth court did not have the necessary jurisdiction to transfer the case to circuit court was without merit where the youth court found that jurisdiction existed; and after considering Miss. Code Ann. § 43-21-157(5)(a) through (k), the court found that no reasonable prospects of rehabilitation existed within the juvenile system. Hicks v. State, 870 So. 2d 1238 (Miss. Ct. App. 2004).

Once a minor becomes a suspect in a crime carrying a potential life sentence or death to the extent that it becomes necessary to detain him and inform him of his Miranda rights before interrogating him, Miss. Code Ann. § 43-21-151(1)(a) of the Youth Court Act is sufficiently invoked so as to remove that youthful suspect from the protections otherwise afforded him under the Act. Moody v. State, 838 So. 2d 324 (Miss. Ct. App. 2002).

Circuit court had original jurisdiction over a child who committed a crime, which if the same crime were committed by an adult would be punishable under either state or federal law by life imprisonment or death; a circuit court with original jurisdiction was not required to consider alternative sentencing. Flowers v. State, 805 So. 2d 654 (Miss. Ct. App. 2002).

Where defendant pled guilty to crimes that fell into the deadly weapon category of subsection (1)(B), the circuit court had original jurisdiction and had the authority to sentence defendant as an adult. Smith v. State, 806 So. 2d 299 (Miss. Ct. App. 2001).

Sentencing 17-year-old defendant to death was not prohibited merely because state statute did not explicitly state that 16 or 17-year-old defendant could be punished with execution for capital crime. Holly v. State, 671 So. 2d 32 (Miss. 1996), post-conviction relief denied, cert. denied, 518 U.S. 1025, 116 S. Ct. 2565, 135 L. Ed. 2d 1082 (1996), reh'g denied, 518 U.S. 1048, 117 S. Ct. 26, 135 L. Ed. 2d 1119 (1996).

Death penalty could be imposed on 17-year-old defendant without particularized findings as to his maturity and moral responsibility. Holly v. State, 671 So. 2d 32 (Miss. 1996), post-conviction relief denied, cert. denied, 518 U.S. 1025, 116 S. Ct. 2565, 135 L. Ed. 2d 1082 (1996), reh'g denied, 518 U.S. 1048, 117 S. Ct. 26, 135 L. Ed. 2d 1119 (1996).

The placement of minors in a detention center subjected the minors to the jurisdiction of the youth court pursuant to § 43-21-103, which provides that "when a child is removed from the control of his parents, the youth court shall secure proper care for him", and, therefore, it was incumbent upon the court to insure that the residents of the center received treatment in accordance with approval by the state. In re M.I., 519 So. 2d 433 (Miss. 1988).

Circuit court's jurisdiction was proper where juvenile was indicted for murder, offense carrying potential life sentence, although he was ultimately convicted for aggravated assault. Johnson v. State, 512 So. 2d 1246 (Miss. 1987), cert. denied, 484 U.S. 968, 108 S. Ct. 462, 98 L. Ed. 2d 402 (1987).

2. Constitutionality.

Defendant could not assert that death penalty violated Eighth Amendment because statutes did not set a minimum age below which child may not be transferred from youth court to circuit court for crimes punishable by death where defendant committed his crime at age 17, an age where it is sufficiently clear that no national consensus forbids imposition of capital punishment. Blue v. State, 674 So. 2d 1184 (Miss. 1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517 (1996).

Mississippi procedure does not violate the constitutional prohibition against cruel and unusual punishment by vesting original jurisdiction in the circuit court when a person under 18 years of age is charged with a capital offense, rather than requiring a certification proceeding in youth court for transfer to the circuit court; Mississippi law allows a capital murder defendant who is under the age of 18 years to request a special hearing to consider his or her age, lack of prior offenses, likelihood of successful rehabilitation and other factors which favor sending the case to the youth court rather than continuing in circuit court. Foster v. State, 639 So. 2d 1263 (Miss. 1994), cert. denied, 514 U.S. 1019, 115 S. Ct. 1365, 131 L. Ed. 2d 221 (1995), reh'g denied, 514 U.S. 1123, 115 S. Ct. 1992, 131 L. Ed. 2d 878 (1995), post-conviction relief denied, 687 So. 2d 1124 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996 (1997).

Mississippi procedure does not violate the constitutional prohibition against cruel and unusual punishment by its failure to explicitly state a minimum age that a person may be subject to the death penalty, since the age at which one may receive a death sentence for the crime of capital murder is implied; no one under 13 years of age may receive the death penalty because a child under the age of 13 cannot even be charged with a felony. Foster v. State, 639 So. 2d 1263 (Miss. 1994), cert. denied, 514 U.S. 1019, 115 S. Ct. 1365, 131 L. Ed. 2d 221 (1995), reh'g denied, 514 U.S. 1123, 115 S. Ct. 1992, 131 L. Ed. 2d 878 (1995), post-conviction relief denied, 687 So. 2d 1124 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996 (1997).

The youth court system does not unconstitutionally usurp jurisdiction committed exclusively to the chancery court by permitting the Supreme Court to hear a direct appeal without appeal to the chancery court, even though the Mississippi Constitution provides that the chancery court shall have full jurisdiction over "minor's business." Youth courts are neither superior, equal, or inferior to other "inferior" courts; they are special courts due to the special nature of their function. Thus, the legislature had authority to vest in the youth courts "exclusive original jurisdiction in all proceedings concerning … an abused child," and the social imperative for prompt disposition of matters affecting children is sufficiently within the police power that the legislature may streamline the appellate process. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

3. Construction and application.

Because defendant was 17 years old at the time the alleged felony offense of accessory after the fact to murder was committed, jurisdiction was proper in the circuit court pursuant to Miss. Code Ann. § 43-21-151 (Rev. 2004). Moreover, although defendant argued that the statements he made to the police were inadmissible because the police failed to take his statements in compliance with the requirements of the Youth Court Act, Miss. Code Ann. § 43-21-303(3) (Rev. 2004), the youth court did not have jurisdiction over defendant's case, and since the Youth Court Act did not apply, parental notification was unnecessary. Miller v. State, 18 So. 3d 898 (Miss. Ct. App. 2009).

Circuit court did not commit reversible error when it admitted defendant's two statements, regarding his involvement in a murder under Miss. Code Ann. § 97-3-

21, into evidence because despite defendant's being a minor at the time of his interrogation, protection of the Mississippi Youth Court pursuant to Miss. Code Ann. § 43-21-151(1)(a) was not afforded to defendant once he was arrested for an act, which, if committed by an adult, was punishable by life imprisonment or death. Trotter v. State, 9 So. 3d 402 (Miss. Ct. App. 2008).

Custody award in favor of a father was vacated on appeal because a youth court had given the maternal grandparents temporary custody earlier, as under Miss. Code Ann. § 43-21-151 and Miss. Code Ann. § 43-21-301(1), the youth court had exclusive jurisdiction to determine custody; however, the issues of child support and paternity were affirmed since the grandparents were not necessary parties to such. Thomas v. Byars, 947 So. 2d 375 (Miss. Ct. App. 2007).

Defendant's convictions for murder and aggravated assault were proper because Miss. Code Ann. § 43-21-151 and case law made it clear that juveniles in Mississippi were not afforded any additional protections during custodial interrogation. Anthony v. State, 936 So. 2d 471 (Miss. Ct. App. 2006).

Order for the Department of Human Services (MDHS) to return funds garnished from the father for child support was improper under Miss. Const. Art. 6, § 159(b) because chancery courts have continuous and exclusive jurisdiction over custody proceedings. The MDHS collected the father's wages pursuant to a valid order and the youth court had no authority under Miss. Code Ann. § 43-21-151 to terminate the father's child support obligations. Dep't of Human Servs. v. Blount, 913 So. 2d 326 (Miss. Ct. App. 2005).

Although the youth court was granted exclusive jurisdiction in abuse proceedings, that jurisdiction may be retained by the chancery court if allegations of abuse are brought during the pendency of a custody hearing. Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003).

Paternity actions can never be brought in youth court. Under Miss. Code Ann. § 93-9-15, the county court, the circuit court, or the chancery court has jurisdiction of an action relating to paternity and support of illegitimate children; the youth court, however, does not have jurisdiction over those matters, and will be unable to act to establish the paternity of a child who is within its jurisdiction. Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003).

Nowhere did the Youth Court Act, Miss. Code Ann. § 43-21-101 et seq., provide for it taking jurisdiction over a case involving exclusively child support, contempt, and modification issues; thus, where the family court had adjudicated the father as the natural father of the mother's child, and set child support and visitation, but subsequently, the family court was abolished, in a later modification action, the appellate court reversed the youth court on the issue of jurisdiction, holding that the matter had to be transferred to the chancery court. Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003).

Counsel was not ineffective for failing to develop and present evidence in support of petitioner's motion to remand the matter to youth court, as petitioner was charged with capital murder and thus, under Miss. Code Ann. § 43-21-151, petitioner did not fall within the jurisdiction of the youth court. McGilberry v. State, 843 So. 2d 21 (Miss. 2003), remanded by 2005 Miss. LEXIS 598 (Miss. Sept. 22, 2005).

The youth court had no jurisdiction and the circuit court was the proper jurisdiction where the defendant used a shotgun to commit a robbery and the maximum penalty for the crime was life imprisonment. Bronson v. State, 786 So. 2d 1083 (Miss. Ct. App. 2001).

The defendant was under the original jurisdiction of the circuit court where he was originally charged with two counts of armed robbery, which counts each merited a life sentence; the fact that those charges were reduced to the crimes of attempted robbery and accessory after the fact to robbery, which mandated less than a life sentence, did not remove original jurisdiction from the circuit court. Young v. State, 797 So. 2d 239 (Miss. Ct. App. 2001).

Because defendant was charged with murder, circuit court was court of "original jurisdiction" and provisions for having a parent present during interrogation and actions in the youth court were thus inapplicable. Blue v. State, 674 So. 2d 1184

(Miss. 1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517 (1996).

Juveniles do not fall within jurisdiction of youth court if they commit offenses punishable by death or life imprisonment. Holly v. State, 671 So. 2d 32 (Miss. 1996), post-conviction relief denied, cert. denied, 518 U.S. 1025, 116 S. Ct. 2565, 135 L. Ed. 2d 1082 (1996), reh'g denied, 518 U.S. 1048, 117 S. Ct. 26, 135 L. Ed. 2d 1119 (1996).

Where police officer charged 14 year old boy who was driving his parents' car without a license, with offense of driving without license, and took boy to police station and issued him a ticket, and less than one hour after release boy committed suicide, officer did not violate Youth Court Law by taking boy into custody without order from Youth Court, since under § 43-21-159(1) Youth Court does not have "exclusive original jurisdiction" over traffic offenses; although subsection (1) of § 43-21-151 grants Youth Court "exclusive original jurisdiction in all proceedings concerning a delinquent child", § 43-21-159(1) creates an exception granting concurrent jurisdiction to appropriate criminal court in cases where child is charged with traffic violation; therefore if boy was taken into custody at all it was for a traffic violation and not for something over which Youth Court had exclusive or original jurisdiction. White v. Walker, 950 F.2d 972 (5th Cir. 1991).

Continuing and exclusive nature of chancery court jurisdiction over issues involving child custody precludes Youth Court from having exclusive original jurisdiction over proceedings involving abused child, where allegations of abuse are raised in context of custody proceeding over which chancery court already exercises jurisdiction. Rights of minor child suspected of having been sexually abused by parent, to access to court, were not impaired by chancery court's considering allegations of sexual abuse without referring matter to Youth Court; and even though Youth Court statute provided for exercise of exclusive jurisdiction over child abuse cases, such provision was not applicable to charges raised in case over which chancery court had already assumed and was exercising jurisdiction. Chrissy F. ex rel. Medley v. Mississippi Dep't of Pub. Welfare, 780 F. Supp. 1104 (S.D. Miss. 1991), aff'd in part, rev'd on other grounds, 995 F.2d 595 (5th Cir. 1993), reh'g denied, 3 F.3d 441 (5th Cir. 1993), cert. denied, 510 U.S. 1214, 114 S. Ct. 1336, 127 L. Ed. 2d 684 (1994).

Defendant's birth certificate established that he was 18 years old at the time of committing burglary. Henry v. State, 486 So. 2d 1209 (Miss. 1986).

4. Original jurisdiction.

Circuit court, rather than the youth court, had original jurisdiction of defendant's statutory rape trial under Miss. Code Ann. § 43-21-151(1)(a), even though he was 16 years old at the time of the crime, since under the sentencing requirements of Miss. Code Ann. § 97-3-65(3)(c), statutory rape under § 97-3-65(1)(b) carried a possible sentence of life imprisonment for an adult. Jennings v. State, — So. 3d —, 2013 Miss. App. LEXIS 25 (Miss. Ct. App. Jan. 22, 2013).

Although defendant argued the circuit court erred in instructing potential jurors regarding the fact that defendant was 14 years old at the time he was accused of murder, because the circuit court had original jurisdiction pursuant to Miss. Code Ann. § 43-21-151(1)(a), the circuit court correctly informed the jurors that defendant could be tried as an adult. Evans v. State, 109 So. 3d 1056 (Miss. Ct. App. 2011), reversed by, remanded by 109 So. 3d 1044, 2013 Miss. LEXIS 31 (Miss. 2013).

In an ongoing child custody case, the chancellor did not err in exercising jurisdiction under Miss. Code Ann. § 43-21-151(1)(c) when subsequent child-abuse allegations were made and investigated because the chancery court possessed original and continuing jurisdiction, and the youth court in the other county failed to comply with the statutory process. McDonald v. McDonald, 39 So. 3d 868 (Miss. 2010).

In a case where a sixteen-year-old was charged with capital murder, defendant's trial counsel failed to raise an issue relating to whether he should have been tried in youth court instead; therefore, the issue was waived on appeal, and even if it had not been waived, the circuit court had original jurisdiction over the murder charge under Miss. Code Ann. § 43-21-151(1)(a). Booker v. State, — So. 2d —, 2006 Miss. App. LEXIS 635 (Miss. Ct. App. Aug. 29, 2006), opinion withdrawn by, substituted opinion at 5 So. 3d 411, 2008 Miss. App. LEXIS 77 (Miss. Ct. App. 2008).

In a trial of defendant who was 13 at the time of the murder, the trial court properly retained jurisdiction in the circuit court under Miss. Code Ann. § 43-21-151(1) as opposed to transferring the case to the youth court under Miss. Code Ann. § 43-21-159(4), because the trial judge performed an extensive analysis of what would be in both defendant's best interest, and the best interest of justice. After having done so, the trial judge found that the interests of justice necessitated that the case stay within the jurisdiction of the circuit court, rather than youth court. Edmonds v. State, — So. 2d —, 2006 Miss. App. LEXIS 88 (Miss. Ct. App. Jan. 31, 2006), opinion withdrawn by, substituted opinion en banc at, modified and rehearing denied by 955 So. 2d 864, 2006 Miss. App. LEXIS 311 (Miss. Ct. App. 2006).

Youth court gained exclusive original jurisdiction of the mother's dealings with the Department of Human Services when the DHS obtained legal custody of the then 17-year-old mother; pursuant to Miss. Code Ann. § 43-21-151, the youth court retained its jurisdiction over the mother until her twentieth birthday. In the Interest of C.B.Y., 936 So. 2d 974 (Miss. Ct. App. 2006).

Circuit court properly had jurisdiction over the inmate even though defendant was 15 years old when he pled guilty, because the inmate had been charged with armed robbery and under Miss. Code Ann. § 43-21-151, any act attempted or committed by a child with a deadly weapon, which if committed by an adult could result in a life sentence, such as armed robbery, gave original jurisdiction to the circuit court. Ivy v. State, 918 So. 2d 84 (Miss. Ct. App. 2006).

Defendant's argument that his plea was involuntarily and unintelligently entered because he was only 16 years of age at the time it was entered, his parents were not present at the court proceedings, and he had been misled as to the length of the sentence he would receive if he pled guilty, was rejected. The circuit court had original jurisdiction since defendant was charged with armed robbery, and being properly before the circuit court, his infancy did not prevent him from entering a valid plea of guilty without parental accompaniment; moreover, the record showed defendant had responded in the affirmative that he understood there was no minimum sentence, but that the maximum sentence for armed robbery was life in prison. Haynes v. State, 906 So. 2d 762 (Miss. Ct. App. 2004).

Defendant's convictions for burglary and armed robbery were both proper where he was 18-years-old at the time he gave his statement, Miss. Code Ann. § 43-21-303(3), and where, even had he only been 17-years-old, he could have been questioned without his mother's presence pursuant to Miss. Code Ann. § 43-21-151(3) because the youth court did not have original jurisdiction concerning any act committed by a child that carried the possible criminal penalty of life imprisonment. Brown v. State, 839 So. 2d 597 (Miss. Ct. App. 2003).

5.-6. [Reserved for future use].

II. Under Former Law.

7. Constitutionality.

The juvenile laws were not of such "irrational disparity" in the treatment of offenders as to violate the Fourteenth Amendment, despite the defendant's argument that if he had been charged with assaulting his victim with the intent to rape, maim, or even murder her, rather than with rape, he would have been remitted to custody for rehabilitation as a juvenile offender rather than prosecuted as an adult. Smith v. State, 229 So. 2d 551 (Miss. 1969).

Where original and exclusive jurisdiction of all proceedings concerning delinquents or neglected children under eighteen years of age was vested in the youth court division of the chancery court or youth court division of county court, this was legitimate exercise of state's police power and did not violate § 156 of the constitution which vests original jurisdiction of felonies in the circuit courts. Wheeler v. Shoemake, 213 Miss. 374, 57 So. 2d 267 (1952).

8. Construction and application.

The youth court had exclusive jurisdiction to determine custody and visitation rights with respect to an abused child even though the youth court order was in direct conflict with a chancery court order in the parents' divorce proceedings which were being conducted concurrently with the youth court proceedings. DeLee v. Wilkinson County, 606 So. 2d 1125 (Miss. 1992).

When a juvenile is charged with an offense carrying a potential life sentence, such as rape or murder, jurisdiction is vested exclusively in the circuit court and the Youth Court Act is inapplicable. Smith v. State, 534 So. 2d 194 (Miss. 1988).

Murder is a crime excepted from the jurisdiction of the youth court. Thus, the circuit court had exclusive jurisdiction over a juvenile charged with murder. Boyd v. State, 523 So. 2d 1037 (Miss. 1988).

The second sentence of Mississippi Code § 43-21-151(2) makes clear what was apparent in a common sense reading of former Mississippi code § 43-21-9 in effect at the time of the proceedings on an earlier offense in 1975. Henry v. State, 486 So. 2d 1209 (Miss. 1986).

While former statute conferred upon youth court authority to act with respect to offender's delinquency through and including his 20th birthday, it did not operate to deprive circuit court of jurisdiction to try offender for offenses committed beyond his 18th birthday. Henry v. State, 486 So. 2d 1209 (Miss. 1986).

Under § 43-21-151, the legislature provided that a child who had not reached his thirteenth birthday could not be held criminally responsible and could not be criminally prosecuted for a misdemeanor or a felony. Cannaday v. State, 455 So. 2d 713 (Miss. 1984), cert. denied, 469 U.S. 1221, 105 S. Ct. 1209, 84 L. Ed. 2d 351 (1985), cert. denied, 469 U.S. 1229, 105 S. Ct. 1229, 84 L. Ed. 2d 366 (1985).

Under § 43-21-105(d), defining "child", and § 43-21-151, the youth court jurisdictional statute, the youth court has jurisdiction over married minors under the age of 18. In re K.A.R., 441 So. 2d 108 (Miss. 1983).

Proceedings involving juvenile offender could properly be brought either in the county where a crime was committed or, in discretion of that court, in the county where the juvenile resided, and it was not error for the youth court where the crime was committed to refuse to certify the juvenile to the youth court of his resident county. Walls v. State, 326 So. 2d 322 (Miss. 1976).

In view of the provisions of Code 1942, § 7185-03, the youth court does not have jurisdiction of a minor charged with disturbing the peace in violation of Code 1942, § 2089.5. Boatright v. Yalobusha County Youth Court, 223 So. 2d 303 (Miss. 1969).

The youth court has original jurisdiction in all proceedings concerning any delinquent or neglected or battered child residing or being in the county. Griffin v. Bell, 215 So. 2d 573 (Miss. 1968).

Youth court had no jurisdiction to award custody of a minor child to her maternal aunt, where the aunt's petition for custody showed on its face that the child was not neglected, as that term is defined by statute. Griffin v. Bell, 215 So. 2d 573 (Miss. 1968).

The exceptions to the youth court's jurisdiction inserted in this section [Code 1942, § 7185-03] by the amendments of 1964 and 1966 do not apply where the youth court was already vested with jurisdiction over a minor which it had found to be a delinquent child, had imposed probationary conditions, and retained jurisdiction. In re Green, 203 So. 2d 470 (Miss. 1967), cert. denied, 392 U.S. 945, 88 S. Ct. 2297, 20 L. Ed. 2d 1407 (1968).

Where the youth court has continuing, retained jurisdiction over the case of a minor, it is the proper tribunal to determine any factual issues as to the minor's rehabilitation occurring subsequent to its order committing him to a training school; which order was affirmed by the supreme court. In re Green, 203 So. 2d 470 (Miss. 1967), cert. denied, 392 U.S. 945, 88 S. Ct. 2297, 20 L. Ed. 2d 1407 (1968).

Once the youth court has obtained jurisdiction in the case of any child, this section [Code 1942, § 7185-04] authorizes it to retain such jurisdiction until he becomes 20 years of age, and where the youth court found the minor to be a delinquent child over a year before the occurrence of the events upon which revocation of probation was based and it had specifically retained jurisdiction in its original order, the fact that the events upon which revocation of probation was based constituted an exception to the youth court's jurisdiction as set forth in Code 1942, § 7185-03, the court was not divested of its originally retained jurisdiction. In re Green, 203 So. 2d 470 (Miss. 1967), cert. denied, 392 U.S. 945, 88 S. Ct. 2297, 20 L. Ed. 2d 1407 (1968).

The youth court is a court of statutory and limited jurisdiction, and the facts showing jurisdiction should appear in its orders. Monk v. State, 238 Miss. 658, 116 So. 2d 810 (1960).

A proceeding against an alleged delinquent child, while not criminal, is quasi-criminal. Monk v. State, 238 Miss. 658, 116 So. 2d 810 (1960).

Since a person convicted of a crime of rape is subject to suffer death or life imprisonment, rape cases are excepted from the provisions of the Youth Court Act, so that the circuit court did not err in proceeding to enter judgment against a minor, who was accused of rape, upon his plea of guilty without conducting a hearing in accordance with the requirement of the act. Bullock v. Harpole, 233 Miss. 486, 102 So. 2d 687 (1958).

Circuit court was without jurisdiction at the time of indictment, trial, and conviction for the crime of grand larceny of a youth who was only 17 years old. Lee v. State, 214 Miss. 740, 59 So. 2d 338 (1952).

Circuit court was not without jurisdiction over two defendants fourteen and fifteen years old, accused of larceny of $1,100, merely because they were first brought into youth court and adjudged delinquent, since the latter court, as it was fully authorized to do, certified them to the circuit court for appropriate proceedings. Gatlin v. State, 207 Miss. 588, 42 So. 2d 774 (1949).

ATTORNEY GENERAL OPINIONS

Penalty for crime of rape of child under fourteen, if committed by adult, is life imprisonment or death and jurisdiction is in circuit court; fact that different punishment is provided if convicted rapist is minor does not change jurisdiction. Genin Aug. 25, 1993, A.G. Op. #93-0611.

Circuit court, not youth court, has original jurisdiction over any violation of Section 97-3-65, notwithstanding that consent has been raised as defense. Genin Aug. 25, 1993, A.G. Op. #93-0611.

Under Section 43-21-151(1), youth court has jurisdiction over subsequent grand larceny charges which are committed after a grand jury's refusal to indict, even though the court did not know of the grand jury's action at the time the second offense was committed. Jones, February 16, 1995, A.G. Op. #95-0058.

If a gun is not utilized in the act of breaking and entering, the crime would still be in the jurisdiction of the youth court. See Section 97-37-14. Weissinger, October 4, 1995, A.G. Op. #95-0652.

Pursuant to Section 43-21-151 any person who possesses or carries a firearm or explosive device on educational property is committing a felony, but unless that firearm is used in the commission or attempt to commit a separate crime, the mere possession of the firearm or explosive device by a juvenile below the age of 17 is in the jurisdiction of the youth court. Dawson, April 17, 1996, A.G. Op. #96-0218.

Although a case may commence as a felony, if it is reduced to a violation of a municipal ordinance, prior to the conclusion of a preliminary hearing, the committing court, if the municipal court, should in effect adjourn the preliminary hearing and the matter be concluded by the municipal court accepting the plea. Lee, Oct. 20, 2006, A.G. Op. 06-0506.

RESEARCH REFERENCES

ALR. Marriage as affecting jurisdiction of juvenile court over delinquent or dependent. 14 A.L.R.2d 336.

Homicide by juvenile as within jurisdiction of juvenile court. 48 A.L.R.2d 663.

Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court. 89 A.L.R.2d 506.

Family court jurisdiction to hear contract claims. 46 A.L.R.5th 735.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 40 et seq.

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

CJS. 43 C.J.S., Infants § 11.

Law Reviews. Comment: Trying juveniles as adults: is the short term gain of retribution outweighed by the long term effects on society? 62 Miss. L. J. 95, Spring, 1992.

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

§ 43-21-153. Powers of youth court; contempt.

(1) The youth court shall have full power and authority to issue all writs and processes including injunctions necessary to the exercise of jurisdiction and to carrying out the purpose of this chapter.

(2) Any person who wilfully violates, neglects or refuses to obey, perform or comply with any order of the youth court shall be in contempt of court and punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment.

SOURCES: Laws, 1979, ch. 506, § 16, eff from and after July 1, 1979.

Cross References — Holding person in civil contempt for improper disclosure of records, see § 43-21-267.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. Notice.
2. Evidence.
3.-5. [Reserved for future use].
6. Due process.

II. Under Former Law.

7. In general.

I. Under Current Law.

1. Notice.

Reverend could not have been held in contempt for failing to appear at a hearing of which he did not have written notice because a youth court judge could not compel a non-party's attendance in court for a hearing to review a no-contact order in the absence of official written notification commanding his presence in court. In re Hines, 978 So. 2d 1275 (Miss. 2008).

2. Evidence.

Evidence was insufficient to show that the attorney's conduct was a willful or contumacious violation of the Youth Court Act beyond a reasonable doubt where the record indicated that the grandmother paid the attorney for her representation of the mother, and the grandmother herself was the attorney's client and had a right to be informed of the outcome of the custody hearing. In re Spencer, — So. 2d —, 2008 Miss. LEXIS 126 (Miss. Feb. 28, 2008), substituted opinion at, opinion withdrawn by 985 So. 2d 330, 2008 Miss. LEXIS 327 (Miss. 2008).

3.-5. [Reserved for future use].

6. Due process.

Proceedings violated the Youth Court Law, and consequently, the right of a juvenile and his parents to due process, because not a single fact was alleged to support the charge against the juvenile; the complete failure to provide adequate notice of the charges violated the Due Process Clauses of the United States and Mississippi Constitutions. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

II. Under Former Law.

7. In general.

Under this section, the youth court has authority to require the parents of the delinquent youth to participate in guidance counseling. In re Evans, 350 So. 2d 52 (Miss. 1977).

Commitment beyond the delinquent child's twentieth birthday is beyond the powers of the court. Monk v. State, 238 Miss. 658, 116 So. 2d 810 (1960).

RESEARCH REFERENCES

ALR. Court's power to punish for contempt a child within the age group subject to jurisdiction of juvenile court. 77 A.L.R.2d 1004.

Interference with enforcement of judgment in criminal or juvenile delinquent case as contempt. 8 A.L.R.3d 657.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 7 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 37 (order — for hearing, investigation, and summons — delinquency or dependency of minor child); Form 54 (subpoena — to appear in juvenile court); Form 58 (proof of service — notice and petition); Forms 59, 60 (waiver — by custodian of child — of service of notice and citation — consent to have child adjudged ward of court); Forms 61-63 (citation — to custodian of child — to appear and show cause); Form 64 (order — for service of citation in custody hearing by publication).

CJS. 43 C.J.S., Infants §§ 61-63, 65 et seq.

§ 43-21-155. Venue.

(1) If a child is alleged to be a delinquent child or a child in need of supervision, the proceedings shall be commenced in any county where any of the alleged acts are said to have occurred. After adjudication, the youth court may, in the best interest of the child, transfer the case at any stage of the proceeding for disposition to the county where the child resides or to a county where a youth court has previously acquired jurisdiction.

(2) If a child is alleged to be an abused or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit.

SOURCES: Laws, 1979, ch. 506, § 17; Laws, 1999, ch. 329, § 2, eff from and after July 1, 1999.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. rules 1 through 37.

JUDICIAL DECISIONS

1. In general.

Finding adjudicating the victim to be a sexually abused child was proper where venue was proper in the county court because the evidence determined that the victim was present in the county when the report was made to the youth court intake unit. Therefore, under the second part of Miss. Code Ann. § 43-21-155(2), there was sufficient evidence to determine that it was not reversible error for the youth court to decide that venue in the county was proper. In the Interest of A. J. M., — So. 2d —, 2004 Miss. App. LEXIS 997 (Miss. Ct. App. Oct. 19, 2004), opinion withdrawn by, substituted opinion at 911 So. 2d 576, 2005 Miss. App. LEXIS 625 (Miss. Ct. App. 2005).

Since each judicial district is to be treated as a separate county for purposes of jurisdiction and venue, § 41-21-155 permits a juvenile to be tried either in the district in which the offense was committed or in the district in which the minor resides. In re K.A.R., 441 So. 2d 108 (Miss. 1983).

§ 43-21-157. Transfer of jurisdiction to other courts.

(1) If a child who has reached his thirteenth birthday is charged by petition to be a delinquent child, the youth court, either on motion of the youth court prosecutor or on the youth court's own motion, after a hearing as hereinafter provided, may, in its discretion, transfer jurisdiction of the alleged offense described in the petition or a lesser included offense to the criminal court which would have trial jurisdiction of such offense if committed by an adult. The child shall be represented by counsel in transfer proceedings.

(2) A motion to transfer shall be filed on a day prior to the date set for the adjudicatory hearing but not more than ten (10) days after the filing of the petition. The youth court may order a transfer study at any time after the motion to transfer is filed. The transfer study and any other social record which the youth court will consider at the transfer hearing shall be made available to the child's counsel prior to the hearing. Summons shall be served in the same manner as other summons under this chapter with a copy of the motion to transfer and the petition attached thereto.

(3) The transfer hearing shall be bifurcated. At the transfer hearing, the youth court shall first determine whether probable cause exists to believe that the child committed the alleged offense. For the purpose of the transfer hearing only, the child may, with the assistance of counsel, waive the determination of probable cause.

(4) Upon such a finding of probable cause, the youth court may transfer jurisdiction of the alleged offense and the youth if the youth court finds by clear and convincing evidence that there are no reasonable prospects of rehabilitation within the juvenile justice system.

(5) The factors which shall be considered by the youth court in determining the reasonable prospects of rehabilitation within the juvenile justice system are:

(a) Whether or not the alleged offense constituted a substantial danger to the public;

(b) The seriousness of the alleged offense;

(c) Whether or not the transfer is required to protect the community;

(d) Whether or not the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(e) Whether the alleged offense was against persons or against property, greater weight being given to the offense against persons, especially if personal injury resulted;

(f) The sophistication, maturity and educational background of the child;

(g) The child's home situation, emotional condition and life-style;

(h) The history of the child, including experience with the juvenile justice system, other courts, probation, commitments to juvenile institutions or other placements;

(i) Whether or not the child can be retained in the juvenile justice system long enough for effective treatment or rehabilitation;

(j) The dispositional resources available to the juvenile justice system;

(k) Dispositional resources available to the adult correctional system for the child if treated as an adult;

(*l*) Whether the alleged offense was committed on school property, public or private, or at any school-sponsored event, and constituted a substantial danger to other students;

(m) Any other factors deemed relevant by the youth court; and

(n) Nothing in this subsection shall prohibit the transfer of jurisdiction of an alleged offense and a child if that child, at the time of the transfer hearing, previously has not been placed in a juvenile institution.

(6) If the youth court transfers jurisdiction of the alleged offense to a criminal court, the youth court shall enter a transfer order containing:

(a) Facts showing that the youth court had jurisdiction of the cause and of the parties;

(b) Facts showing that the child was represented by counsel;

(c) Facts showing that the hearing was held in the presence of the child and his counsel;

(d) A recital of the findings of probable cause and the facts and reasons underlying the youth court's decision to transfer jurisdiction of the alleged offense;

(e) The conditions of custody or release of the child pending criminal court proceedings, including bail or recognizance as the case may justify, as well as a designation of the custodian for the time being; and

(f) A designation of the alleged offense transferred and of the court to which the transfer is made and a direction to the clerk to forward for filing in such court a certified copy of the transfer order of the youth court.

(7) The testimony of the child respondent at a transfer hearing conducted pursuant to this chapter shall not be admissible against the child in any proceeding other than the transfer hearing.

(8) When jurisdiction of an offense is transferred to the circuit court, or when a youth has committed an act which is in original circuit court jurisdiction pursuant to Section 43-21-151, the jurisdiction of the youth court over the youth for any future offenses is terminated, except that jurisdiction

over future offenses is not terminated if the circuit court transfers or remands the transferred case to the youth court or if a child who has been transferred to the circuit court or is in the original jurisdiction of the circuit court is not convicted. However, when jurisdiction of an offense is transferred to the circuit court pursuant to this section or when an offense committed by a youth is in original circuit court jurisdiction pursuant to Section 43-21-151, the circuit court shall thereafter assume and retain jurisdiction of any felony offenses committed by such youth without any additional transfer proceedings. Any misdemeanor offenses committed by youth who are in circuit court jurisdiction pursuant to this section or Section 43-21-151 shall be prosecuted in the court which would have jurisdiction over that offense if committed by an adult without any additional transfer proceedings. The circuit court may review the transfer proceedings on motion of the transferred child. Such review shall be on the record of the hearing in the youth court. The circuit court shall remand the offense to the youth court if there is no substantial evidence to support the order of the youth court. The circuit court may also review the conditions of custody or release pending criminal court proceedings.

(9) When any youth has been the subject of a transfer to circuit court for an offense committed in any county of the state or has committed any act which is in the original jurisdiction of the circuit court pursuant to Section 43-21-151, that transfer or original jurisdiction shall be recognized by all other courts of the state and no subsequent offense committed by such youth in any county of the state shall be in the jurisdiction of the youth court unless transferred to the youth court pursuant to Section 43-21-159(3). Transfers from youth courts of other states shall be recognized by the courts of this state and no youth who has a pending charge or a conviction in the adult court system of any other state shall be in the jurisdiction of the youth courts of this state, but such youths shall be in the jurisdiction of the circuit court for any felony committed in this state or in the jurisdiction of the court of competent jurisdiction for any misdemeanor committed in this state.

SOURCES: Laws, 1979, ch. 506, § 18; Laws, 1980, ch. 550, § 6; Laws, 1986, ch. 467, § 1; Laws, 1994, ch. 595, § 2; Laws, 1999, ch. 329, § 7; Laws, 2009, ch. 426, § 1, eff from and after July 1, 2009.

Cross References — Transfer from youth court for act designated as delinquent act, see § 43-21-151.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Transfer held improper.

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.
7. Constitutionality.
8. Age.

9. Guilty plea.
10. Crime punishable by death or by life imprisonment.
11. Appeal.
12. Miscellaneous.

I. Under Current Law.

1. In general.

Defendant's claim that the youth court did not have the necessary jurisdiction to transfer the case to circuit court was without merit where the youth court found that jurisdiction existed; and after considering Miss. Code Ann. § 43-21-157(5)(a) through (k), the court found that no reasonable prospects of rehabilitation existed within the juvenile system. Hicks v. State, 870 So. 2d 1238 (Miss. Ct. App. 2004).

Circuit court did not have jurisdiction over burglary charge against juvenile, where charge was not certified from youth court. Ferguson v. State, 688 So. 2d 760 (Miss. 1997).

Because defendant had previously been convicted of aggravated assault and certified as an adult, he would not have been entitled to a youth court hearing for his capital murder charge even if such a hearing would otherwise be required. Blue v. State, 674 So. 2d 1184 (Miss. 1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517 (1996).

2. Transfer held improper.

Drug offender's case was improperly transferred from youth court to the circuit court; the youth court should not have transferred the case without making specific statutory findings and without conducting a bifurcated hearing. Buck v. State, 838 So. 2d 256 (Miss. 2003).

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

In the trial of a juvenile for murder, when the circuit court directed the verdict in favor of the juvenile its jurisdiction ended, and it erred in not sustaining the motion of the juvenile to transfer the cause to the youth court of the county. Grant v. State, 305 So. 2d 351 (Miss. 1974).

Code 1942, § 7204 does not ipso facto deprive the circuit court of its jurisdiction in felony cases, it not being mandatory that such jurisdiction be surrendered thereunder, and it is not necessarily violative of any provision of the constitution. McGinnis v. State, 201 Miss. 239, 29 So. 2d 109 (1947).

Code 1942, § 7204, instead of § 7203, Code of 1942, is applicable to a prosecution charging a boy under eighteen years of age with felonious assault and battery with intent to kill and murder, as regards the petition to transfer the case to the juvenile court. McGinnis v. State, 201 Miss. 239, 29 So. 2d 109 (1947).

The disposition to be made of any child under eighteen years of age being prosecuted for a felony, whether to dismiss the prosecution and order the child committed to the juvenile court, or, after conviction, to suspend judgment and order the defendant released on good behavior, or such other order as in the judgment of the court would be for the best interest of the infant, is confined to the discretion of the criminal court. Farr v. State, 199 Miss. 637, 25 So. 2d 186 (1946).

Under this section [Code 1942, § 7204] the dismissal of a felony prosecution, and the committal of the defendant therein to the juvenile court rests in the sound discretion of the trial judge, subject only to review for abuse thereof. Parker v. State, 194 Miss. 895, 13 So. 2d 620 (1943), appeal dismissed, cert. denied, 320 U.S. 705, 64 S. Ct. 69, 88 L. Ed. 413 (1943).

Refusal of trial court to dismiss prosecution of 16-year-boy for murder and to commit him to the juvenile court was not error where there was no abuse of discretion apparent. Parker v. State, 194 Miss. 895, 13 So. 2d 620 (1943), appeal dismissed, cert. denied, 320 U.S. 705, 64 S. Ct. 69, 88 L. Ed. 413 (1943).

7. Constitutionality.

No jeopardy attached upon the impaneling and swearing in of the first jury, since the circuit court was without jurisdiction to try the minor defendant for manslaughter, and she was not placed in jeopardy for a second time by her subsequent trial for murder and conviction of manslaughter, after she had been certified by the youth court to the circuit court for trial as an adult. Butler v. State, 489 So. 2d 1093 (Miss. 1986).

The prosecution of a youth as an adult in a state court, upon the youth's transfer from the juvenile court system after an adjudicatory hearing finding that the youth had violated a state criminal statute, and after a dispositional hearing finding that the youth was unfit for treatment as a juvenile, violated the double jeopardy clause of the Fifth Amendment as applied to the states through the Fourteenth Amendment. Breed v. Jones, 421 U.S. 519, 95 S. Ct. 1779, 44 L. Ed. 2d 346 (1975), on remand, 519 F.2d 1314 (9th Cir. Cal. 1975).

That prosecutor makes the decision whether a juvenile will be charged with murder rather than manslaughter, thereby determining whether defendant will be tried as a juvenile or an adult, does not render this section unconstitutional, nor does section unconstitutionally violate a juvenile defendant's right to a presumption of innocence. Jackson v. State, 311 So. 2d 658 (Miss. 1975).

Code 1942, § 7204 does not ipso facto deprive the circuit court of its jurisdiction in felony cases, it not being mandatory that such jurisdiction be surrendered thereunder, and it is not necessarily violative of any provision of the constitution. McGinnis v. State, 201 Miss. 239, 29 So. 2d 109 (1947).

8. Age.

Code 1942, § 7204 applies to a person under the age of eighteen years at the time of trial and is not applicable to a person over the age of eighteen years at the time of trial, notwithstanding that he may have been under eighteen years of age at the time of commission of the offense. Farr v. State, 199 Miss. 637, 25 So. 2d 186 (1946).

9. Guilty plea.

Where delinquents under eighteen years of age had been arrested for the commission of a crime to which they pleaded guilty but the delinquents were not convicted therefor and no criminal sentence imposed upon them, Code 1942 § 7201 rather than Code 1942 § 6755 applies so that the court, acting as a juvenile court, had jurisdiction to commit them to the proper state institution even though there was no affirmative finding that it was for the best interests of the delinquents and of the public that they should be so committed. Williams v. Bush, 199 Miss. 382, 24 So. 2d 863 (1946).

10. Crime punishable by death or by life imprisonment.

A 15-year-old defendant was properly convicted of armed robbery in the circuit court, though there was no youth court certification order, since the maximum punishment possible for armed robbery is life imprisonment and the clause of § 43-21-31 [former law now repealed] giving exclusive jurisdiction to the circuit court of juveniles charged with crimes punishable by life imprisonment or death was not intended to apply only to offenses for which death was a possible punishment or to offenses for which the only possible alternative punishments were life imprisonment or death. Carter v. State, 334 So. 2d 376 (Miss. 1976).

In the trial of a juvenile for murder, when the circuit court directed the verdict in favor of the juvenile its jurisdiction ended, and it erred in not sustaining the motion of the juvenile to transfer the cause to the youth court of the county. Grant v. State, 305 So. 2d 351 (Miss. 1974).

Since a person convicted of a crime of rape is subject to suffer death or life imprisonment, rape cases are excepted from the provisions of the Youth Court Act, so that the circuit court did not err in proceeding to enter judgment against a minor, who was accused of rape, upon his plea of guilty without conducting a hearing in accordance with the requirement of the Act. Bullock v. Harpole, 233 Miss. 486, 102 So. 2d 687 (1958).

This statute Code 1942, § 7204 does not apply to capital cases. Lewis v. State, 201 Miss. 48, 28 So. 2d 122 (1946), cert. denied, 331 U.S. 785, 67 S. Ct. 1305, 91 L. Ed. 1816 (1947).

11. Appeal.

Appeal to the supreme court does not lie from a youth court order that does no more than decline jurisdiction and certify the case to the circuit court. The adequacy of the youth court investigation may be challenged by a motion to quash an indictment returned pursuant to the transfer, and an adverse ruling of the circuit court on such a motion may be assigned as error on appeal if a conviction follows. In re Watkins, 324 So. 2d 232 (Miss. 1975).

12. Miscellaneous.

Although proper certification is necessary before the circuit court has jurisdiction to try a minor under 18 years of age, there is no requirement in § 41-21-31 [former law, now repealed] that an order of the youth court certifying an accused to the circuit court for trial must be filed in the circuit court before trial. Hammons v. State, 291 So. 2d 177 (Miss. 1974).

Since the circuit court did not have jurisdiction to try a 16-year-old for a felony until after indictment by the grand jury, the return of an indictment for manslaughter did not automatically confer exclusive jurisdiction on the circuit court and preclude the assumption of jurisdiction by the youth court, and the circuit court should have sustained the minor defendant's motion to transfer the case to the county youth court for a determination by that court whether it should retain jurisdiction or waive it, in view of the rehabilitative purposes of the Youth Court Act. Walker v. State, 235 So. 2d 714 (Miss. 1970).

Where a defendant, charged with rape, was a large young man, grown in all respects except age, the juvenile laws of the state of Mississippi were not applicable. Smith v. State, 229 So. 2d 551 (Miss. 1969).

An order waiving the youth court's jurisdiction over a 15-year-old minor charged with the offense of burglary which does not affirmatively show that a hearing was had in the presence of the minor and his parent or parents, that the minor was represented by counsel, or that the right to counsel was properly waived is fatally defective. Hopkins v. State, 209 So. 2d 841 (Miss. 1968).

Circuit court was not without jurisdiction over two defendants fourteen and fifteen years old, accused of larceny of $1,100, merely because they were first brought into Youth Court and adjudged delinquent, since the latter court, as it was fully authorized to do, certified them to the circuit court for appropriate proceedings. Gatlin v. State, 207 Miss. 588, 42 So. 2d 774 (1949).

Where one accused of murder committed when he was sixteen years of age was over eighteen years of age at the time of trial, the trial court was correct in not referring the case to the juvenile court at the time of trial, and in overruling the motion to suspend sentence without a new hearing, since he had already heard the evidence, was fully informed of the act of delinquency involved and a further hearing of evidence would have served no useful purpose. Farr v. State, 199 Miss. 637, 25 So. 2d 186 (1946).

RESEARCH REFERENCES

ALR. Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings. 37 A.L.R.5th 703.

Juvenile's guilty or no contest plea in adult court as waiver of defects in transfer or certification proceedings. 74 A.L.R.5th 453.

Am Jur. 15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 41 (Referring minor to district attorney for prosecution — finding that minor is not a fit subject for juvenile court proceedings).

Law Reviews. Comment: Trying juveniles as adults: is the short term gain of retribution outweighed by the long term effects on society? 62 Miss. L. J. 95, Spring, 1992.

Comment: Revealing Mississippi Youth Court: The Consequences of Lifting Confidentiality Requirements on Juvenile Justice in Mississippi, 71 Miss. L.J. 999, Spring, 2002.

Practice References. Young, Trial Handbook for Mississippi Lawyers § 4:3.

§ 43-21-159. Transfer of cases from other courts.

(1) When a person appears before a court other than the youth court, and it is determined that the person is a child under jurisdiction of the youth court, such court shall, unless the jurisdiction of the offense has been transferred to such court as provided in this chapter, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, immediately dismiss the proceeding without prejudice and forward all documents pertaining to the cause to the youth court; and all entries in permanent records shall be expunged. The youth court shall have the power to order and supervise the expunction or the destruction of such records in accordance with Section 43-21-265. Upon petition therefor, the youth court shall expunge the record of any case within its jurisdiction in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.

In cases where the child is charged with a hunting or fishing violation or a traffic violation, whether it be any state or federal law, a violation of the Mississippi Implied Consent Law, or municipal ordinance or county resolution, or where the child is charged with a violation of Section 67-3-70, the appropriate criminal court shall proceed to dispose of the same in the same manner as for other adult offenders and it shall not be necessary to transfer the case to the youth court of the county. However, unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or a violation of Section 67-3-70, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of this chapter.

(2) After conviction and sentence of any child by any other court having original jurisdiction on a misdemeanor charge, and within the time allowed for an appeal of such conviction and sentence, the youth court of the county shall have the full power to stay the execution of the sentence and to release the child on good behavior or on other order as the youth court may see fit to make unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted. When a child is convicted of a misdemeanor and is committed to, incarcerated in or imprisoned in a jail or other place of detention by a criminal court having proper jurisdiction of such charge, such court shall notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration. The youth court shall have the power to order and supervise the destruction of any records involving children maintained by the criminal court in accordance with Section 43-21-265. However, the youth court shall have the power to set aside a judgment of any other court rendered in any matter over which the youth court has exclusive original jurisdiction, to

expunge or destroy the records thereof in accordance with Section 43-21-265, and to order a refund of fines and costs.

(3) Nothing in subsection (1) or (2) shall apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

(4) In any case wherein the defendant is a child as defined in this chapter and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that it would be in the best interest of such child and in the interest of justice, may at any stage of the proceedings prior to the attachment of jeopardy transfer such proceedings to the youth court for further proceedings unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction, and the youth court shall, upon acquiring jurisdiction, proceed as provided in this chapter for the adjudication and disposition of delinquent child proceeding proceedings. If the case is not transferred to the youth court and the youth is convicted of a crime by any circuit court, the trial judge shall sentence the youth as though such youth was an adult. The circuit court shall not have the authority to commit such child to the custody of the Department of Youth Services for placement in a state-supported training school.

(5) In no event shall a court sentence an offender over the age of eighteen (18) to the custody of the Division of Youth Services for placement in a state-supported training school.

(6) When a child's driver's license is suspended by the youth court for any reason, the clerk of the youth court shall report the suspension, without a court order under Section 43-21-261, to the Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.

(7) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court.

SOURCES: Laws, 1979, ch. 506, § 19; Laws, 1980, ch. 550, § 7; Laws, 1983, ch. 435, § 9; Laws, 1985, ch. 431, § 5; Laws, 1986, ch. 467, § 2; Laws, 1994, ch. 595, § 3; Laws, 1996, ch. 454, § 2; Laws, 1996, ch. 527, § 17; Laws, 2003, ch. 557, § 1; Laws, 2012, ch. 564, § 1, eff from and after July 1, 2012.

Cross References — Jurisdiction of youth court of offenses committed by child which have been transferred by circuit court having original jurisdiction, see § 43-21-151.

Disclosure of records involving children, see § 43-21-261.

Alcohol or drug test of parolee, see § 47-5-603.

Mississippi Implied Consent Law, see §§ 63-11-1 et seq.

Prohibition of minor's purchase of light wine or beer, see § 67-3-70.

Provision whereby person who has been convicted of a misdemeanor before reaching his twenty-third birthday, and who is first offender, may petition the court to have his record expunged, see § 99-19-71.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Particular applications.

3.-6. [Reserved for future use].

II. Under Former Law.

7. In general.

I. Under Current Law.

1. In general.

Although circuit court did not make any findings as to whether a transfer to youth court would be in the best interest of the minor and in the interest of justice; the error was harmless as there was no evidence which would support a finding that a transfer would be in defendant's best interest or in the interest of justice as it the acts of the perpetrators demonstrated a clear lack of conscience, and they needed to be dealt with harshly, no matter their ages. Horne v. State, 825 So. 2d 627 (Miss. 2002).

Circuit court with original jurisdiction was not required to consider alternative sentencing under the Youth Court Act, Miss. Code Ann. § 43-21-151 et seq. Flowers v. State, 805 So. 2d 654 (Miss. Ct. App. 2002).

The court remanded a case to the circuit court for consideration of alternative sentencing under the Youth Court Act where the circuit court stated that the defendant was only 17 and had no prior offenses, but failed to state on the record whether it considered the provisions of the Youth Court Act before sentencing the defendant. Gary v. State, 760 So. 2d 743 (Miss. 2000).

Trial court adequately considered juvenile Sentencing Guidelines by considering guidelines in context of juvenile's motion for postconviction relief, even though court had made no notation in record of having considered guidelines at guilty plea hearing. Ferguson v. State, 688 So. 2d 760 (Miss. 1997).

Issue of whether capital case juvenile is transferred from circuit court back to youth court is within sound discretion of circuit court judge. Foster v. State, 687 So. 2d 1124 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996 (1997).

Defendant's claim that youthful offender statute was unconstitutional was procedurally barred, since defendant did not cite any authority for his proposition or give any reasons as to why his position was correct reflection of the law. Hoops v. State, 681 So. 2d 521 (Miss. 1996).

When considering alternative sentencing under youthful offender statute, trial judge must consider presence or absence of facilities for care of offender in mitigation of the punishment and allow defendant's counsel the opportunity to introduce such evidence, and trial judge must also make specific findings as to basis for his sentence and include those findings in the record along with mitigation evidence. Hoops v. State, 681 So. 2d 521 (Miss. 1996).

There are alternatives set out in the Youth Court Act which the circuit court judge should consider in imposing sentence on a child; the trial judge should see to it that the record clearly reflects the reason which prompted him or her to exercise his or her discretion in utilizing or not utilizing the alternatives afforded, and the trial court should let the record disclose the facts which prompted the exercise of discretion either way. Erwin v. State, 557 So. 2d 799 (Miss. 1990), but see Strahan v. State, 729 So. 2d 800 (Miss. 1998).

Alternatives under Youth Court Act are: (1) commit defendant to county jail for term not in excess of one year; (2) suspend sentence and release defendant on probation; (3) commit defendant to custody of Department of Corrections; and (4) impose fine as though defendant was adult under such terms and conditions as may be prescribed; however, Circuit Court shall not have authority to commit such child to custody of Department of Youth Services for placement in state supported training school. Gardner v. State, 514 So. 2d 292 (Miss. 1987).

Judge must consider alternative sentences available and in effect at time crime was committed, and not at time of sentencing, where subsequent amendment of statute limited alternatives available. Gardner v. State, 514 So. 2d 292 (Miss. 1987).

2. Particular applications.

In a trial of defendant who was 13 at the time of the murder, the trial court properly retained jurisdiction in the circuit court under Miss. Code Ann. § 43-21-151(1) as opposed to transferring the case to the youth court under Miss. Code Ann. § 43-21-159(4), because the trial judge performed an extensive analysis of what would be in both defendant's best interest, and the best interest of justice. After having done so, the trial judge found that the interests of justice necessitated that the case stay within the jurisdiction of the circuit court, rather than youth court. Edmonds v. State, — So. 2d —, 2006 Miss. App. LEXIS 88 (Miss. Ct. App. Jan. 31, 2006), opinion withdrawn by, substituted opinion en banc at, modified and rehearing denied by 955 So. 2d 864, 2006 Miss. App. LEXIS 311 (Miss. Ct. App. 2006).

Matter was remanded to the youth court for a new dispositional hearing because the youth court had placed the juvenile in a state-supported training school, and the placement was now prohibited, pursuant to Miss. Code Ann. § 43-21-159(5), because the juvenile had reached the age of 18; the youth court had other dispositional alternatives available to it, pursuant to Miss. Code Ann. § 43-21-605. In the Interest of L.C.A., 938 So. 2d 300 (Miss. Ct. App. 2006).

The Youth Court Law did not offer the defendant an additional sentencing alternative since, although he was 17 years of age at the time of the commission of the crimes, he was under the original jurisdiction of the circuit court under subsection (4). Young v. State, 797 So. 2d 239 (Miss. Ct. App. 2001).

Seventeen-year-old capital murder defendant was procedurally barred by res judicata from arguing in application for postconviction collateral relief that death penalty was unconstitutional due to lack of particularized finding by circuit court in retaining original jurisdiction over defendant and not transferring him to youth court, as issue had already been challenged on direct appeal, and defendant had merely camouflaged issue by couching claim as ineffective assistance of counsel. Foster v. State, 687 So. 2d 1124 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996 (1997).

Defense counsel for 17-year-old capital murder defendant did not provide ineffective assistance of counsel by failing to request transfer proceeding from circuit court to youth court, as there was no prejudice to defendant; had counsel made request, trial judge would have found that defendant was on brink of 18 years of age and had violent, selfish nature, exhibited uncooperative tendencies, and had maturity to know right from wrong, and counsel would be hard-pressed to convince judge that defendant would not have committed subject types of acts once he was 18 years old and it was only because he had not yet turned 18 that he committed crimes due to his immaturity. Foster v. State, 687 So. 2d 1124 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996 (1997).

Defendant was not denied consideration of alternative sentencing under youthful offender statute, where trial judge told defendant's counsel during defendant's motion for new trial that he considered alternatives available when he sentenced defendant, youth services counselor recommended that defendant be tried in adult court system, and judge noted on the record the reasons for his sentence. Hoops v. State, 681 So. 2d 521 (Miss. 1996).

A trial judge in a murder prosecution was well within his discretion in sentencing the 14-year-old defendant to life imprisonment for aiding and abetting in the murder, in spite of the defendant's argument that the judge abused his discretion by not stating in the record his reasons for declining to utilize possible alternative criminal sanctions for juvenile offenders provided for in § 43-21-159 of the Youth Court Act, where the judge stated that he was very much aware of the requirements in May v. State (Miss. 1981) 398 So. 2d 1331 because of the many cases he had handled dealing with teenagers charged with capital offenses; although minimal, the trial court adequately addressed the reasons for not utilizing the alternatives afforded. Swinford v. State, 653 So. 2d 912 (Miss. 1995).

Police officer did not violate state youth court law by allegedly taking 14-year-old into custody for driving his parents' car without license, without order from youth court, as youth court did not have exclusive original jurisdiction over traffic offenses. White v. Walker, 950 F.2d 972 (5th Cir. 1991).

Where police officer charged 14 year old boy who was driving his parents' car without a license, with offense of driving without license, and took boy to police station and issued him a ticket, and less than one hour after release boy committed suicide, officer did not violate Youth Court Law by taking boy into custody without order from Youth Court, since under § 43-21-159(1) Youth Court does not have "exclusive original jurisdiction" over traffic offenses; although subsection (1) of § 43-21-151 grants Youth Court "exclusive original jurisdiction in all proceedings concerning a delinquent child", § 43-21-159(1) creates an exception granting concurrent jurisdiction to appropriate criminal court in cases where child is charged with traffic violation; therefore if boy was taken into custody at all it was for a traffic violation and not for something over which Youth Court had exclusive or original jurisdiction. White v. Walker, 950 F.2d 972 (5th Cir. 1991).

Records of criminal offenses are kept pursuant to § 45-27-1. The legislature of Mississippi has specifically authorized expungement of criminal offender records in limited cases-youth court cases, §§ 43-21-159 and 43-21-265; first offense misdemeanor convictions occurring prior to age 23, § 99-19-71; drug possession convictions occurring prior to age 26, § 41-29-150; purchase of alcoholic beverages by one under age 21, § 67-3-70; and municipal court convictions, § 21-23-7. Expungement of felony convictions which arose pursuant to guilty pleas are governed by § 99-15-57 which provides that any person who pled guilty within 6 months prior to the effective date of § 99-15-26 may apply to the court for an order expunging his or her criminal records. Under §§ 99-15-57 and 99-15-26 a circuit court has the power to expunge a felony conviction pursuant to a guilty plea under certain conditions. Accordingly, a petitioner who pled guilty to the felony of burglary might have been eligible for relief pursuant to §§ 99-15-57 and 99-15-26 if his guilty plea had occurred on or after October 1, 1982, that being the earliest date to satisfy the "within 6 months prior to" March 31, 1983, requirement of § 99-15-57. However, the petitioner pleaded guilty to burglary on October 9, 1979, 3 years prior to October 1, 1982, and admitted that he did not fall within the criterion in any of the statutes authorizing expungement, and thus the trial court did not err in denying his petition for expungement. Caldwell v. State, 564 So. 2d 1371 (Miss. 1990).

Where it appeared that the trial court, in sentencing a 16-year-old defendant convicted of armed robbery to a term of 14 years in state prison, had been under the misapprehension that §§ 97-3-79 and 47-7-3, read together, mandated a sentence of at least 10 years in the state penitentiary, absent a jury verdict of life imprisonment, the case would be remanded to the court for a clarification of the sentencing since there was no way to ascertain whether the trial court had considered the statutory alternative for sentencing minor offenders under the provisions of § 43-21-159(3). Bougon v. State, 405 So. 2d 101 (Miss. 1981).

In a prosecution for armed robbery, a sentence of 12 years in prison, without eligibility of parole for 10 years, imposed upon a 14-year-old mentally retarded defendant did not constitute cruel and unusual punishment; however, the case would be remanded to the trial court for consideration of alternative sentencing under § 43-21-159 where the trial judge should have placed in the record the sources and facts of his sentence study and should have permitted the defendant's attorney to introduce evidence of the presence or absence of facilities at the Mississippi State Penitentiary for the care of the defendant, and the availability of other institutions or facilities which could be utilized by the defendant. May v. State, 398 So. 2d 1331 (Miss. 1981).

3.-6. [Reserved for future use].

II. Under Former Law.

7. In general.

Even though a defendant under eighteen years of age insists that he is not guilty of more than a misdemeanor, this section [Code 1942 § 7203] is not applicable where he is being prosecuted for a felony. McGinnis v. State, 201 Miss. 239, 29 So. 2d 109 (1947).

Code 1942 § 7204, instead of § 7203, Code of 1942, is applicable to a prosecution charging a boy under eighteen years of age with felonious assault and battery with intent to kill and murder, as regards the petition to transfer the case to the juvenile court. McGinnis v. State, 201 Miss. 239, 29 So. 2d 109 (1947).

Delinquents under eighteen years of age, by virtue of this section [Code 1942, § 7199], may be brought before the juvenile court when arrested on any charge "with or without warrant," and when this is done the court has full jurisdiction to make proper disposition of the delinquent, although a proceeding also may be instituted upon petition by some reputable person as provided in § 7188. Williams v. Bush, 199 Miss. 382, 24 So. 2d 863 (1946).

ATTORNEY GENERAL OPINIONS

Based on Section 43-21-159, a justice court is authorized to order jail time for a minor convicted of a violation of the Implied Consent Law. However, if such a conviction is a misdemeanor, the justice court must notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration. Perkins, July 19, 1996, A.G. Op. #96-0465.

Pursuant to Section 43-21-159, a warrant may be issued by the justice court for a minor who fails to pay a fine imposed as a result of a DUI conviction. Perkins, July 19, 1996, A.G. Op. #96-0465.

Pursuant to Section 43-21-159, the court with original jurisdiction over the juvenile charged with a DUI should hold the juvenile in the adult jail. However, the juvenile should not be placed in a cell with other adult inmates. Palmer, August 16, 1996, A.G. Op. #96-0525.

Pursuant to Section 43-21-159, the DUI arrest records of a juvenile are not confidential, however the youth court has the authority to order the destruction of such records. Palmer, August 16, 1996, A.G. Op. #96-0525.

Under Section 43-21-159, if a juvenile is charged with a misdemeanor and a DUI charge, the DUI charge should be handled by justice court and the misdemeanor should be handled by the youth court. Palmer, August 16, 1996, A.G. Op. #96-0525.

If a juvenile is convicted of DUI and sentenced by the justice court to serve time, under Section 43-21-159, the juvenile should be sentenced to the county jail. However, such court should notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration. Palmer, August 16, 1996, A.G. Op. #96-0525.

Juveniles convicted of fish and game violations should be treated as adults and may be sentenced to work programs to pay their fines. James, March 13, 1998, A.G. Op. #98-0140.

A justice court may sentence a juvenile to serve time in jail for contempt of court when the juvenile has been convicted of a game and fish violation and failed to comply with the sentence imposed by the justice court, provided the juvenile is physically and mentally capable of complying. James, June 19, 1998, A.G. Op. #98-0353.

Jurisdiction over violations of city and county ordinances by persons under the age of 18 is in the appropriate criminal court. Regan, July 30, 1999, A.G. Op. #99-0355.

Mississippi Justice Information Center is not prohibited from entering the following crimes committed by individuals under 18 years of age into its database: (1) crimes punishable under state or federal law by life imprisonment or death; (2) offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult; (3) a hunting or fishing violation;

(4) a traffic violation; (5) a violation of the Mississippi Implied Consent Law; or (6) a violation of Section 67-3-70. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

Pursuant to this section, a youth court has the authority to remove jurisdiction from a criminal court for the offenses of possession of alcohol by a minor or possession of light wine or beer by a minor with certain limitations, i.e., the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult. Such removals should be done on a case by case basis. Wiggins, Sept. 19, 2003, A.G. Op. 03-0424.

RESEARCH REFERENCES

ALR. Sufficiency of random sampling of drug or contraband to establish jurisdictional amount required for conviction. 45 A.L.R.5th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

PROVISIONS APPLICABLE TO ALL PROCEEDINGS

SEC.
43-21-201. Representation by counsel; youth court-appointed attorneys required to receive juvenile justice training; exemption; duties of youth court counsel.
43-21-203. Conduct of proceedings.
43-21-205. Court costs and fees.

§ 43-21-201. Representation by counsel; youth court-appointed attorneys required to receive juvenile justice training; exemption; duties of youth court counsel.

(1) Each party shall have the right to be represented by counsel at all stages of the proceedings including, but not limited to, detention, adjudicatory and disposition hearings and parole or probation revocation proceedings. In delinquency matters the court shall appoint legal defense counsel who is not also a guardian ad litem for the same child. If the party is a child, the child shall be represented by counsel at all critical stages: detention, adjudicatory and disposition hearings; parole or probation revocation proceedings; and post-disposition matters. If indigent, the child shall have the right to have counsel appointed for him by the youth court.

(2) When a party first appears before the youth court, the judge shall ascertain whether he is represented by counsel and, if not, inform him of his rights including his right to counsel.

(3) An attorney appointed to represent a delinquent child shall be required to complete annual juvenile justice training that is approved by the

Mississippi Judicial College or the Mississippi Commission on Continuing Legal Education. The Mississippi Judicial College and the Mississippi Commission on Continuing Legal Education shall determine the amount of juvenile justice training and continuing education required to fulfill the requirements of this subsection. The Administrative Office of Courts shall maintain a roll of attorneys who have complied with the training requirements and shall enforce the provisions of this subsection. Should an attorney fail to complete the annual training requirement or fail to attend the required training within six (6) months of being appointed to a youth court case, the attorney shall be disqualified to serve and the youth court shall immediately terminate the representation and appoint another attorney. Attorneys appointed by a youth court to five (5) or fewer cases a year are exempt from the requirements of this subsection.

(4) The child's attorney shall owe the same duties of undivided loyalty, confidentiality and competent representation to the child or minor as is due an adult client pursuant to the Mississippi Rules of Professional Conduct.

(5) An attorney shall enter his appearance on behalf of a party in the proceeding by filing a written notice of appearance with the youth court, by filing a pleading, notice or motion signed by counsel or by appearing in open court and advising the youth court that he is representing a party. After counsel has entered his appearance, he shall be served with copies of all subsequent pleadings, motions and notices required to be served on the party he represents. An attorney who has entered his appearance shall not be permitted to withdraw from the case until a timely appeal if any has been decided, except by leave of the court then exercising jurisdiction of the cause after notice of his intended withdrawal is served by him on the party he represents.

(6) Each designee appointed by a youth court judge shall be subject to the Code of Judicial Conduct and shall govern himself or herself accordingly.

SOURCES: Laws, 1979, ch. 506, § 20; Laws, 1980, ch. 550, § 8; Laws, 2006, ch. 539, § 1; Laws, 2007, ch. 347, § 1; Laws, 2007, ch. 481, § 1; Laws, 2009, ch. 536, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 1 of ch. 347, Laws of 2007, effective from and after passage (approved March 15, 2007), amended this section. Section 1 of ch. 481, Laws of 2007, effective July 1, 2007 (approved March 27, 2007), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 481, Laws of 2007, which contains language that specifically provides that it supersedes § 43-21-201 as amended by Laws of 2007, ch. 347.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. rules 1 through 37.

JUDICIAL DECISIONS

1. In general.

In proceedings to determine custody of 2 children who had been adjudicated neglected and placed in foster care, the children were denied their due process right of representation where they were without the services of an attorney or guardian ad litem for approximately 3 years during the course of the custody proceedings. Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

When parents at educational neglect hearing are not informed of right to counsel and right to appeal, parents may file untimely appeal and neglect order will be reversed; in addition, where order upon which subsequent citation of contempt is founded directly results from interrogation during which parents are not informed of any of rights enumerated at § 43-21-557, citation for contempt must also be reversed. In re I.G., 467 So. 2d 920 (Miss. 1985).

RESEARCH REFERENCES

ALR. Right to and appointment of counsel in juvenile court proceedings. 60 A.L.R.2d 691.

Circumstances under which attorney retains right to compensation notwithstanding voluntary withdrawal from case. 53 A.L.R.5th 287.

Am Jur. 15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 71, 72 (right to counsel).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions (Michie).

§ 43-21-203. Conduct of proceedings.

(1) The youth court shall be in session at all times.

(2) All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults.

(3) Hearings in all cases involving children shall be conducted without a jury and may be recessed from time to time.

(4) All hearings shall be conducted under such rules of evidence and rules of court as may comply with applicable constitutional standards.

(5) No proceeding by the youth court in cases involving children shall be a criminal proceeding but shall be entirely of a civil nature.

(6) The general public shall be excluded from the hearing, and only those persons shall be admitted who are found by the youth court to have a direct interest in the cause or work of the youth court. Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel.

(7) In all hearings, except detention and shelter hearings under Section 43-21-309, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

(8) The youth court may exclude the attendance of a child from a hearing in neglect and abuse cases with consent of the child's counsel. The youth court

may exclude the attendance of a child from any portion of a disposition hearing that would be injurious to the best interest of the child in delinquency and children in need of supervision cases with consent of the child's counsel.

(9) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence:

(a) to subpoena, confront and examine the person who prepared or furnished data for the report; and

(b) to introduce evidence controverting the contents of the report.

(10) Except as provided by Section 43-21-561(5) or as otherwise provided by this chapter, the disposition of a child's cause or any evidence given in the youth court in any proceedings concerning the child shall not be admissible against the child in any case or proceeding in any court other than a youth court.

SOURCES: Laws, 1979, ch. 506, § 21; Laws, 1980, ch. 550, § 9, eff from and after July 1, 1980.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Inapplicability of Mississippi Rules of Evidence in youth court cases, see Miss. R. Evid. 1101.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. rules 1 through 37.

JUDICIAL DECISIONS

1. In general.
2. Constitutional rights.

1. In general.

Order dismissing the petition alleging that the child was an abused child was the product of prosecutorial discretion, and the guardian ad litem was responsible for presenting the youth court with the motion to dismiss; the motion and resulting order, however, remained a product of prosecutorial discretion because the guardian ad litem was acting in accordance with his agreement with the prosecutor, and the order dismissing the petition did not render an adjudication as to the allegations in the petition as it simply abandoned the case, leaving all parties just as they were before the petition was filed, such that the youth court did not deprive the mother of her right to notice and a hearing. In the Interest of C.R., 879 So. 2d 1119 (Miss. Ct. App. 2004).

In proceedings to determine custody of 2 children who had been adjudicated neglected and placed in foster care, the children were denied their due process right of representation where they were without the services of an attorney or guardian ad litem for approximately 3 years during the course of the custody proceedings. Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

The statutory requirements for an adjudicatory hearing under the Youth Court Act (§§ 43-21-101 et seq.) were met where the proceedings were recorded by a court reporter pursuant to § 43-21-203(7), the parties received notice of the hearing more than 3 days before it was scheduled to begin under § 43-21-507, and the hearing was held within 90 days of the filing of the petition under § 43-21-551; the fact that the proceeding was postponed for approximately three months was without consequence since § 43-21-551 provides that a hearing may be continued upon a showing of good cause, and therefore the hearing was held within the time provided by the Youth Court Act. In re C.R., 604 So. 2d 1079 (Miss. 1992).

A trial court committed error by failing to conduct a separate and distinct dispositional hearing as required by § 43-21-601 of the Youth Court Act (§§ 43-21-101 et seq.) where the court determined, at the conclusion of the adjudicatory hearing which resulted in a finding that the child was educationally neglected, that the child should be placed in the Mississippi School for the Deaf. In re C.R., 604 So. 2d 1079 (Miss. 1992).

In noncriminal cases involving allegations of child abuse by the parent, the right of confrontation should be accorded to the accused parent. Bailey v. Woodcock, 574 So. 2d 1369 (Miss. 1990).

Where the testimony of a child is needed, it should not be declined except to avoid serious risk to the welfare of the child. To avoid this damage, the trial court must have considerable discretion as to the conduct of the examination and the appearance of the courtroom. Bailey v. Woodcock, 574 So. 2d 1369 (Miss. 1990).

2. Constitutional rights.

Where the circuit court ordered a sexual battery case filed against defendant juvenile to be transferred to youth court, the transfer was accepted and the youth court entered a final judgment adjudicating defendant a delinquent child. The State's appeal of the transfer order was barred by the Fifth Amendment's protection against double jeopardy; Miss. Code Ann. § 43-21-203(5) did not limit the application of the right against double jeopardy in a juvenile proceeding. State v. J.L.M., 996 So. 2d 740 (Miss. 2008).

RESEARCH REFERENCES

ALR. Right to and appointment of counsel in juvenile court proceedings. 60 A.L.R.2d 691.

Admissibility of expert medical testimony on battered child syndrome. 98 A.L.R.3d 306.

Applicability of double jeopardy to juvenile court proceedings. 5 A.L.R.4th 234.

Admissibility at criminal prosecution of expert testimony on battering parent syndrome. 43 A.L.R.4th 1203.

Standing of media representatives or organizations to seek review of, or to intervene to oppose, order closing criminal proceedings to public. 74 A.L.R.4th 476.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 88, 96 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 71, 72 (right to counsel).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

CJS. 43 C.J.S., Infants §§ 61-63, 65 et seq.

Lawyers' Edition. Procedural requirements under federal constitution in juvenile delinquency proceedings. 25 L. Ed. 2d 950.

§ 43-21-205. Court costs and fees.

In proceedings under this chapter, no court costs shall be charged against any party to a petition, and no salaried officer of the state, county or any municipality, nor any youth court counselor, nor any witness other than an expert witness shall be entitled to receive any fee for any service rendered to the youth court or for attendance in the youth court in any proceedings under this chapter; but the fees of the circuit and chancery clerks in youth court cases originating by petition shall be paid as is provided by law for like services in other cases and shall be paid by the county on allowance of the board of supervisors on an itemized cost bill approved by the judge. These costs shall be paid out of the general fund. No clerk shall be allowed compensation for attendance in youth court.

SOURCES: Laws, 1979, ch. 506, § 22; Laws, 1999, ch. 400, § 1, eff from and after July 1, 1999.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

ATTORNEY GENERAL OPINIONS

Youth court action is in nature of complaint other than ex parte matter carrying $75 fee. Jones Nov. 10, 1993, A.G. Op. #93-0514.

When the Department of Human Services (DHS) calls an expert witness in a parental termination case, the expense incurred would be the responsibility of the department; however, if an expert witness is sought on the motion of the guardian ad litem or the court, and the court so orders, any expert witness fee or expense would be borne by the county, not by DHS. Ward, May 4, 1999, A.G. Op. #99-0175.

Where an order of the chancery court for filing intake records results in an order for no action, the chancery clerk may not charge a fee. Sumners, August 27, 1999, A.G. Op. #99-0342.

The chancery clerk does not earn a fee where the Youth Court, without a hearing: (a) orders that no action be taken; (b) orders that an informal adjustment be made; (c) orders that the Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in this same environment; or (d) orders that the child is warned or counseled informally. Sumners, August 27, 1999, A.G. Op. #99-0342.

Fees paid to clerks in Youth Court cases are paid from the general fund, but are statutorily required to be paid in the same manner as fees for "like services" in other cases pursuant to an itemized cost bill approved by the appropriate judge; there is no authority for officials who receive such fees to have those fees paid through the county payroll with the county matching social security and retirement contributions. Lee, Jr., March 10, 2000, A.G. Op. #2000-0101.

Although the amount of the chancery clerk's fee is calculated by reference to the laws "for like services in other cases," the compensation is by the county to the clerk for services performed for the county by the clerk and, further, the chancery clerk is required by law to provide these services to the county; this is similar to the fees paid by the county to the medical examiner for services the examiner is required by law to provide to the county and is a direct payment for services rendered for which the board of supervisors is authorized to pay the matching employer's contributions out of general funds; however, the same does not apply in lunacy cases where the parties to the litigation are liable for the costs and the county is only potentially liable in pauper's cases. Childers, Jan. 25, 2002, A.G. Op. #02-0024.

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children § 121.

CJS. 43 C.J.S., Infants §§ 61-63, 65 et seq.

RECORDS

Sec.	
43-21-251.	Court records.
43-21-253.	Repealed.
43-21-255.	Law enforcement records.

43-21-257. Agency records.
43-21-259. Confidentiality of other records involving children.
43-21-261. Disclosure of records.
43-21-263. Sealing of records.
43-21-265. Destruction of records.
43-21-267. Penalty for violation.

§ 43-21-251. Court records.

(1) The court records of the youth court shall include:

(a) A general docket in which the clerk of the youth court shall enter the names of the parties in each cause, the date of filing the petition, any other pleadings, all other papers in the cause, issuance and return of process, and a reference by the minute book and page to all orders made therein. The general docket shall be duly indexed in the alphabetical order of the names of the parties.

(b) All the papers and pleadings filed in a cause. The papers in every cause shall be marked with the style and number of the cause and the date when filed. All the papers filed in a cause shall be kept in the same file, and all the files shall be kept in numerical order.

(c) All social records of a youth court, which shall include all intake records, social summaries, medical examinations, mental health examinations, transfer studies and all other information obtained and prepared in the discharge of official duty for the youth court.

(i) A "social summary" is an investigation of the personal and family history and the environment of a child who is the subject of a youth court cause. The social summary should describe all reasonable appropriate alternative dispositions. The social summary should contain a specific plan for the care and assistance to the child with a detailed explanation showing the necessity for the proposed plan of disposition.

(ii) A "medical examination" is an examination by a physician of a child who is the subject of a youth court cause or of his parent. The youth court may order a medical examination at any time after the intake unit has received a written complaint. Whenever possible, a medical examination shall be conducted on an outpatient basis. A medical examination of a parent of the child who is the subject of the cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.

(iii) A "mental health examination" is an examination by a psychiatrist or psychologist of a child who is the subject of a youth court cause or of his parent. The youth court may order a mental health examination at any time after the intake unit has received a written complaint. Whenever possible, a mental health examination shall be conducted on an outpatient basis. A mental health examination of a parent of the child who is the subject of a cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.

(iv) A "transfer study" is a social summary which addresses the factors set forth in Section 43-21-157(5). A transfer study shall not be admissible evidence nor shall it be considered by the court at any adjudicatory hearing. It shall be admissible evidence at a transfer or disposition hearing.

(d) A minute book in which the clerk shall record all the orders of the youth court.

(e) Proceedings of the youth court and evidence.

(f) All information obtained by the youth court from the Administrative Office of Courts pursuant to a request under Section 43-21-261(15).

(2) The records of the youth court and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(3) The court records of the youth court may be kept on computer in the manner provided for storing circuit court records and dockets as provided in Section 9-7-171. The Administrative Office of Courts shall recommend to the youth courts a uniform format to maintain the records of such courts.

SOURCES: Laws, 1979, ch. 506, § 23; Laws, 1994, ch. 458, § 9; Laws, 1997, ch. 440, § 6; Laws, 2014, ch. 375, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added the second sentence to the end of (3).

Cross References — Definition of "records involving children," see § 43-21-105.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-3. [Reserved for future use.]

II. Under Former Law.

4. In general.

I. Under Current Law.

1. In general.

Youth court erred by imposing a gag order in a child custody proceeding because it failed to consider any balancing test before imposing the gag order, thus, there existed no imminent danger to a compelling interest of such magnitude that the restraint on the parties' speech was warranted. Cruz v. Jackson County, Dep't of Human Servs. (In the Interest of R.J.M.B.), 133 So. 3d 335 (Miss. 2013).

Issue of confidentiality of youth court records was not moot because a federal court did not seal its records since Miss. Code Ann. § 43-21-261 still had the effect of limiting the public's ability to view, copy, or otherwise disseminate the youth-court records for any other reason. Cruz v. Jackson County, Dep't of Human Servs. (In the Interest of R.J.M.B.), 133 So. 3d 335 (Miss. 2013).

Youth court did not abuse its discretion in ordering that the youth court records in a child custody proceeding remain confidential because the mother could not expressly waive record confidentiality just because she was a parent. Cruz v. Jackson County, Dep't of Human Servs. (In the Interest of R.J.M.B.), 133 So. 3d 335 (Miss. 2013).

2.-3. [Reserved for future use.]

II. Under Former Law.

4. In general.

Where circuit judge or chancellor commits minor to training school, record must disclose all necessary jurisdictional facts. Yarborough v. Coulter, 162 Miss. 50, 138 So. 591 (1932).

ATTORNEY GENERAL OPINIONS

Records set forth in Section 43-21-251 are to be in possession of clerk of youth court, which is chancery clerk in counties not having county court; these records include all papers and pleadings filed in cause and docket book and minute book of youth court. O'Neal Sept. 22, 1993, A.G. Op. #93-0604.

A general docket call each morning for all cases set for a hearing that day, with all parties and their attorneys present in the courtroom at the same time, would compromise the confidentiality provisions in this section and Section 43-21-261 and is therefore not legally permissible. Sigalas, Dec. 20, 2002, A.G. Op. #02-0739.

§ 43-21-253. Repealed.

Repealed by Laws, 1997, ch. 440, § 7, eff from and after July 1, 1997.
[Laws, 1979, ch. 506, § 24]

Editor's Note — Former § 43-21-253 provided the definition of social records and required the confidentiality of those records. For current provisions defining social records, see § 43-21-251(c).

§ 43-21-255. Law enforcement records.

(1) Except as otherwise provided by this section, all records involving children made and retained by law enforcement officers and agencies or by the youth court prosecutor and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(2) A child in the jurisdiction of the youth court and who has been taken into custody for an act, which if committed by an adult would be considered a felony or offenses involving possession or use of a dangerous weapon or any firearm, may be photographed or fingerprinted or both. Any law enforcement agency taking such photographs or fingerprints shall immediately report the existence and location of the photographs and fingerprints to the youth court. Copies of fingerprints known to be those of a child shall be maintained on a local basis only. Such copies of fingerprints may be forwarded to another local, state or federal bureau of criminal identification or regional depository for identification purposes only. Such copies of fingerprints shall be returned promptly and shall not be maintained by such agencies.

(3) Any law enforcement record involving children who have been taken into custody for an act, which if committed by an adult would be considered a felony and/or offenses involving possession or use of a dangerous weapon including photographs and fingerprints, may be released to a law enforcement agency supported by public funds, youth court officials and appropriate school officials without a court order under Section 43-21-261. Law enforcement records shall be released to youth court officials and to appropriate school officials upon written request. Except as provided in subsection (4) of this section, any law enforcement agency releasing such records of children in the

jurisdiction of the youth court shall immediately report the release and location of the records to the youth court. The law enforcement agencies, youth court officials and school officials receiving such records are prohibited from using the photographs and fingerprints for any purpose other than for criminal law enforcement and juvenile law enforcement. Each law enforcement officer or employee, each youth court official or employee and each school official or employee receiving the records shall submit to the sender a signed statement acknowledging his or her duty to maintain the confidentiality of the records. In no instance shall the fact that such records of children in the jurisdiction of the youth court exist be conveyed to any private individual, firm, association or corporation or to any public or quasi-public agency the duties of which do not include criminal law enforcement or juvenile law enforcement.

(4) When a child's driver's license is suspended for refusal to take a test provided under the Mississippi Implied Consent Law, the law enforcement agency shall report such refusal, without a court order under Section 43-21-261, to the Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.

(5) All records involving a child convicted as an adult or who has been twice adjudicated delinquent for a sex offense as defined by Section 45-33-23, Mississippi Code of 1972, shall be public and shall not be kept confidential.

SOURCES: Laws, 1979, ch. 506, § 25; Laws, 1980, ch. 550, § 10; Laws, 1994, ch. 595, § 4; Laws, 1995, ch. 595, § 10; Laws, 2000, ch. 499, § 22, eff from and after July 1, 2000.

Cross References — Definition of "records involving children," see § 43-21-105.

Justice information system and maintenance of files of fingerprints, photographs and other records, generally, see §§ 45-27-1 et seq.

Mississippi Implied Consent Law, see §§ 63-11-1 et seq.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. rules 1 through 37.

ATTORNEY GENERAL OPINIONS

There is no conflict between this section and § 37-11-29; the former section provides the procedure for information which may be released on students who are in the jurisdiction of the youth court, while the latter section provides for the release of information on students who are under the jurisdiction of the adult court system. Beckett, May 22, 1998, A.G. Op. #98-0257.

Mississippi Justice Information Center is not prohibited from entering the following crimes committed by individuals under 18 years of age into its database: (1) crimes punishable under state or federal law by life imprisonment or death; (2) offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult; (3) a hunting or fishing violation; (4) a traffic violation; (5) a violation of the Mississippi Implied Consent Law; or (6) a violation of Section 67-3-70. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

Release by law enforcement of the name and identifying information of a child reported missing or abducted would not violate the provisions of § 43-21-261. Riley, Sept. 27, 2002, A.G. Op. #02-0561.

§ 43-21-257. Agency records.

(1) Unless otherwise provided in this section, any record involving children, including valid and invalid complaints, and the contents thereof maintained by the Department of Human Services, or any other state agency, shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(2) The Office of Youth Services shall maintain a state central registry containing the number and disposition of all cases together with such other useful information regarding those cases as may be requested and is obtainable from the records of the youth court. The Office of Youth Services shall annually publish a statistical record of the number and disposition of all cases, but the names or identity of any children shall not be disclosed in the reports or records. The Office of Youth Services shall adopt such rules as may be necessary to carry out this subsection. The central registry files and the contents thereof shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry shall be subject to the penalty in Section 43-21-267. The youth court shall furnish, upon forms provided by the Office of Youth Services, the necessary information, and these completed forms shall be forwarded to the Office of Youth Services.

(3) The Department of Human Services shall maintain a state central registry on neglect and abuse cases containing (a) the name, address and age of each child, (b) the nature of the harm reported, (c) the name and address of the person responsible for the care of the child, and (d) the name and address of the substantiated perpetrator of the harm reported. "Substantiated perpetrator" shall be defined as an individual who has committed an act(s) of sexual abuse or physical abuse that would otherwise be deemed as a felony or any child neglect that would be deemed as a threat to life, as determined upon investigation by the Office of Family and Children's Services. "Substantiation" for the purposes of the Mississippi Department of Human Services Central Registry shall require a criminal conviction or an adjudication by a youth court judge or court of competent jurisdiction, ordering that the name of the perpetrator be listed on the central registry, pending due process. The Department of Human Services shall adopt such rules and administrative procedures, especially those procedures to afford due process to individuals who have been named as substantiated perpetrators before the release of their name from the central registry, as may be necessary to carry out this subsection. The central registry shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry without following the rules and administrative procedures of the department shall be subject to the penalty in Section 43-21-267. The Department of Human Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation and/or release of information on the central registry under this section and any other applicable section of the code, unless

determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department, pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.

(4) The Mississippi State Department of Health may release the findings of investigations into allegations of abuse within licensed day care centers made under the provisions of Section 43-21-353(8) to any parent of a child who is enrolled in the day care center at the time of the alleged abuse or at the time the request for information is made. The findings of any such investigation may also be released to parents who are considering placing children in the day care center. No information concerning those investigations may contain the names or identifying information of individual children.

The Department of Health shall not be held civilly liable for the release of information on any findings, recommendations or actions taken pursuant to investigations of abuse that have been conducted under Section 43-21-353(8).

SOURCES: Laws, 1979, ch. 506, § 26; Laws, 1993, ch. 450, § 1; Laws, 1994, ch. 591, § 1; Laws, 1999, ch. 329, § 3; Laws, 2000, ch. 436, § 1; Laws, 2002, ch. 509, § 2; Laws, 2003, ch. 489, § 1, eff from and after passage (approved Mar. 28, 2003.)

Cross References — Definition of "records involving children," see § 43-21-105.

Mississippi Sex Offender Registration Law, see §§ 45-33-21 et seq.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

ATTORNEY GENERAL OPINIONS

Registry of neglected and abused children should include name of person who was responsible for child at time abuse occurred; depending on facts, this person may also be perpetrator. Hathorn, Sept. 17, 1992, A.G. Op. #92-0679.

There are two hurdles which must be overcome in order for an individual to be a "substantiated perpetrator" of abuse: first, the investigation by the Department of Human Services must have revealed the commission of act(s) of either sexual abuse or physical abuse, or child neglect causing a threat to life; and, second, there must be an adjudication or conviction for child neglect, or for sexual abuse or physical abuse which would otherwise be deemed a felony. Brooks, July 26, 2002, A.G. Op. #02-0401.

Placement of any name on the central registry must be supported by a court order, and not simply a determination by DHS staff. Whether a hearing is required prior to an adjudication is a question for the judge to determine. Brittain, Aug. 29, 2003, A.G. Op. 03-0397.

While the youth court judge may order that the individual's name be placed on the registry, that individual must still be provided notice and an opportunity to be heard regarding the findings of abuse and/or neglect. Brittain, Aug. 29, 2003, A.G. Op. 03-0397.

§ 43-21-259. Confidentiality of other records involving children.

All other records involving children and the contents thereof shall be kept confidential and shall not be disclosed except as provided in section 43-21-261.

SOURCES: Laws, 1979, ch. 506, § 27, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. In general.

A youth court judge did not abuse his discretion in holding that youth court records of a juvenile's adjudication of delinquency arising from a shoplifting incident could be released for the purposes of the juvenile's civil suit for slander, assault, and battery against a store employee arising from the same incident. Daniels ex rel. Glass v. Wal-Mart Stores, Inc., 634 So. 2d 88 (Miss. 1993).

Youth court records of a juvenile's adjudication of delinquency arising from a shoplifting incident were admissible into evidence in the juvenile's slander suit against a store employee arising from the same incident, since the truth is a total defense to a slander suit; the juvenile's action of initiating the slander suit "lifted the veil of confidentiality" of the youth court proceedings, thereby exposing him to the "harsh realities of litigation." Daniels ex rel. Glass v. Wal-Mart Stores, Inc., 634 So. 2d 88 (Miss. 1993).

The right of "confidentiality" on behalf of the child in a youth court proceeding is a "qualified" and not an "absolute" privilege. Daniels ex rel. Glass v. Wal-Mart Stores, Inc., 634 So. 2d 88 (Miss. 1993).

ATTORNEY GENERAL OPINIONS

Mississippi Justice Information Center is not prohibited from entering the following crimes committed by individuals under 18 years of age into its database: (1) crimes punishable under state or federal law by life imprisonment or death; (2) offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult; (3) a hunting or fishing violation; (4) a traffic violation; (5) a violation of the Mississippi Implied Consent Law; or (6) a violation of Section 67-3-70. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 91 (consent-by parent or guardian — to release medical and psychiatric information to juvenile court).

§ 43-21-261. Disclosure of records.

(1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff of the youth court, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be

disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety or the functioning of the youth court and then only to the following persons:

(a) The judge of another youth court or member of another youth court staff;

(b) The court of the parties in a child custody or adoption cause in another court;

(c) A judge of any other court or members of another court staff;

(d) Representatives of a public or private agency providing supervision or having custody of the child under order of the youth court;

(e) Any person engaged in a bona fide research purpose, provided that no information identifying the subject of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the judge gives prior written approval, and the child, through his or her representative, gives permission to release the information;

(f) The Mississippi Department of Employment Security, or its duly authorized representatives, for the purpose of a child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed;

(g) To any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health, safety or well-being of a child and that such disclosure is in the best interests of the child or an adult who was formerly the subject of a youth court delinquency proceeding.

Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child convicted as an adult.

(2) Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation which is to be considered by the youth court at a hearing, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

(5)(a) The youth court prosecutor or prosecutors, the county attorney, the district attorney, the youth court defender or defenders, or any attorney representing a child shall have the right to inspect and copy any law enforcement record involving children.

(b) The Department of Human Services shall disclose to a county prosecuting attorney or district attorney any and all records resulting from an investigation into suspected child abuse or neglect when the case has been referred by the Department of Human Services to the county prosecuting attorney or district attorney for criminal prosecution.

(c) Agency records made confidential under the provisions of this section may be disclosed to a court of competent jurisdiction.

(d) Records involving children shall be disclosed to the Division of Victim Compensation of the Office of the Attorney General upon the division's request without order of the youth court for purposes of determination of eligibility for victim compensation benefits.

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of Human Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.

(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.

(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, for any violation of Section 41-29-139(a)(1) or for any violation of Section 63-11-30, shall not be held confidential and shall be made available to the public.

(10) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.

(11) The victim of an offense committed by a child who is the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.

(12) A classification hearing officer of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as provided in Section 47-7-17, shall have the right to inspect such records when the offender becomes eligible for parole.

(13) The youth court shall notify the Department of Public Safety of the name, and any other identifying information such department may require, of any child who is adjudicated delinquent as a result of a violation of the Uniform Controlled Substances Law.

(14) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.

(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(16) The Administrative Office of Courts may, in its discretion, disclose to the Department of Public Safety any or all of the information involving children contained in the office's youth court data management system known as Mississippi Youth Court Information Delivery System or "MYCIDS."

(17) The youth courts of the state shall disclose to the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose. The disclosure prescribed in this subsection shall not require a court order and shall be made in sortable, electronic format where possible. The PEER Committee may seek the assistance of the Administrative Office of Courts in seeking this information. The PEER Committee shall not disclose the identities of any youth who have been adjudicated in the youth courts of the state and shall only use the disclosed information for the purpose of monitoring the effectiveness and efficiency of programs established to assist adjudicated youth, and to ascertain the incidence of adjudicated youth who become adult offenders.

(18) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local

prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(19) In every case where there is any indication or suggestion of either abuse or neglect and a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In cases of child deaths, the following information may be released by the Mississippi Department of Human Services: (a) child's name; (b) address or location; (c) verification from the Department of Human Services of case status (no case or involvement, case exists, open or active case, case closed); (d) if a case exists, the type of report or case (physical abuse, neglect, etc.), date of intake(s) and investigation(s), and case disposition (substantiated or unsubstantiated). Notwithstanding the aforesaid, the confidentiality provisions of this section shall continue if there is a pending or planned investigation by any local, state or federal governmental agency or institution.

(20) Any member of a foster care review board designated by the Department of Human Services shall have the right to inspect youth court records relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.

(21) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court in any administrative or due process hearing held, pursuant to Section 43-21-257, by the Department of Human Services for individuals whose names will be placed on the central registry as substantiated perpetrators.

SOURCES: Laws, 1979, ch. 506, § 28; Laws, 1980, ch. 550, § 4; Laws, 1986, ch. 422, § 1; Laws, 1988, ch. 459; Laws, 1989, ch. 433, § 1; Laws, 1991, ch. 468 § 6; Laws, 1994, ch. 591, § 2; Laws, 1994, ch. 595, § 5; Laws, 1995, ch. 547, § 3; Laws, 1997, ch. 440, § 8; Laws, 1998, ch. 447, § 1; Laws, 1998, ch. 516, § 19; Laws, 2000, ch. 436, § 2; Laws, 2000, ch. 499, § 23; Laws, 2001, ch. 360, § 1; Laws, 2001, ch. 393, § 12; Laws, 2004, ch. 489, § 2; Laws, 2006, ch. 600, § 3; Laws, 2007, ch. 478, § 1; Laws, 2007, ch. 587, § 11; Laws, 2010, ch. 349, § 1; Laws, 2013, ch. 531, § 1; Laws, 2014, ch. 375, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 1 of ch. 447, Laws of 1998, effective July 1, 1998, amended this section. Section 19 of ch. 516, Laws of 1998, effective July 1, 1998, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 20, 1998, meeting of the Committee.

Section 2 of ch. 436, Laws of 2000, effective July 1, 2000, amended this section. Section 23 of ch. 499, Laws of 2000, effective July 1, 2000, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 29, 2000, meeting of the Committee.

Section 1 of ch. 360, Laws of 2001, effective from and after July 1, 2001, amended this section. Section 12 of ch. 393, Laws of 2001, effective from and after July 1, 2001, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the April 26, 2001, meeting of the Committee.

Section 1 of ch. 478, Laws of 2007, effective July 1, 2007 (approved March 27, 2007), amended this section. Section 11 of ch. 587, Laws of 2007, effective July 1, 2007 (approved April 21, 2007), also amended this section. As set out above, this section reflects the language of Section 11 of ch. 587, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2014 amendment added (17) and redesignated the remaining subsections accordingly.

Cross References — Duties and authority of Administrative Director of Courts, see § 9-21-9.

Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Reporting of suspension of child's driver's license, see § 43-21-159.

Law enforcement records, generally, see § 43-21-255.

Agency records, generally, see § 43-21-257.

Other records involving children, see § 43-21-259.

Mississippi Sex Offenders Registration Law, see §§ 45-33-21 et seq.

Classification Committee of the State Department of Corrections generally, see §§ 47-5-99 et seq.

Mississippi Department of Employment Security generally, see §§ 71-5-101 et seq.

Division of Victim Compensation, see § 99-41-7.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.
2. Impeachment purposes.
3. Right to records.

1. In general.

Chancellor erred by refusing to allow the mother and father to review their daughter's records from the youth court and to conduct an interview with the social worker in camera because the chancellor denied the appellate court an opportunity to review the evidence he relied upon in making his decision; also Miss. Code Ann. § 43-21-261(3) granted parents the right to inspect the records which were to be considered by the youth court without the prerequisite of an order from the youth court. Heffner v. Rensink, 938 So. 2d 917 (Miss. Ct. App. 2006).

A youth court judge did not abuse his discretion in holding that youth court records of a juvenile's adjudication of delinquency arising from a shoplifting incident could be released for the purposes of the juvenile's civil suit for slander, assault, and battery against a store employee arising from the same incident. Daniels ex rel. Glass v. Wal-Mart Stores, Inc., 634 So. 2d 88 (Miss. 1993).

Youth court records of a juvenile's adjudication of delinquency arising from a shoplifting incident were admissible into evidence in the juvenile's slander suit against a store employee arising from the same incident, since the truth is a total defense to a slander suit; the juvenile's action of initiating the slander suit "lifted the veil of confidentiality" of the youth court proceedings, thereby exposing him to the "harsh realities of litigation." Daniels ex rel. Glass v. Wal-Mart Stores, Inc., 634 So. 2d 88 (Miss. 1993).

The right of "confidentiality" on behalf of the child in a youth court proceeding is a "qualified" and not an "absolute" privilege. Daniels ex rel. Glass v. Wal-Mart Stores, Inc., 634 So. 2d 88 (Miss. 1993).

Youth Court Act does not require prior approval of youth court before records may be used to impeach testimony of witness in criminal proceeding; youth court confidentiality is for protection of youth, and no rational reading of statutory scheme would give adult shield when object of proceedings is truth of charges against him, not youth. Yarborough v. State, 514 So. 2d 1215 (Miss. 1987).

2. Impeachment purposes.

Witness's juvenile court record was offered for general impeachment purposes, which was not permitted, and the record was not offered to show bias or interest in testifying and thus the trial court properly refused to allow the witness to be cross-examined thereby; the witness's prior instances of violence were inadmissible under Miss. R. Evid. 608(b) and the evidence was also inadmissible under Miss. R. Evid. 404(a), as it was offered to show that he was a violent person to create an inference that he acted in conformity with his propensity for violence. Williams v. State, 994 So. 2d 808 (Miss. Ct. App. 2008), writ of certiorari denied by 998 So. 2d 1010, 2008 Miss. LEXIS 665 (Miss. 2008).

3. Right to records.

Youth court erred by imposing a gag order in a child custody proceeding because it failed to consider any balancing test before imposing the gag order, thus, there existed no imminent danger to a compelling interest of such magnitude that the restraint on the parties' speech was warranted. Cruz v. Jackson County, Dep't of Human Servs. (In the Interest of R.J.M.B.), 133 So. 3d 335 (Miss. 2013).

Issue of confidentiality of youth court records was not moot because a federal court did not seal its records since Miss. Code Ann. § 43-21-261 still had the effect of limiting the public's ability to view, copy, or otherwise disseminate the youth-court records for any other reason. Cruz v. Jackson County, Dep't of Human Servs. (In the Interest of R.J.M.B.), 133 So. 3d 335 (Miss. 2013).

Youth court did not abuse its discretion in ordering that the youth court records in a child custody proceeding remain confidential because the mother could not expressly waive record confidentiality just because she was a parent. Cruz v. Jackson County, Dep't of Human Servs. (In the Interest of R.J.M.B.), 133 So. 3d 335 (Miss. 2013).

Defendant's conviction for sexual battery of a child by a person in a position of trust or authority over the child was proper because there was nothing in the record to indicate the existence of any Brady materials among the victim's youth court records that were sought. Defendant was not entitled to engage in a fishing expedition, as he was not entitled to view all of the victim's youth court records, Miss. Code Ann. § 43-21-261(1)(c). Roberson v. State, 61 So. 3d 204 (Miss. Ct. App. 2010), writ of certiorari denied by 62 So. 3d 974, 2011 Miss. LEXIS 263 (Miss. 2011), writ of certiorari denied by 132 S. Ct. 507, 181 L. Ed. 2d 358, 2011 U.S. LEXIS 7779, 80 U.S.L.W. 3260 (U.S. 2011).

ATTORNEY GENERAL OPINIONS

Youth court judge may authorize release of information to schools concerning juvenile records of any student when judge finds that such disclosure is required for public safety and finds that health or safety of that student or other students in school may be affected if information is not made available to school officials. Bennett Nov. 3, 1993, A.G. Op. #93-0779.

Restitution ordered to be made by the parents of the juvenile and by a juvenile who is adjudicated for an act which comes under Section 43-21-261(8) or (9) could be enrolled as a civil judgment. Any restitution ordered, since the youth court judge is empowered to order restitution from both the juvenile and the parents, guardians or caretakers, could be joint and several. Floyd, April 21, 1995, A.G. Op. #95-0219.

If a juvenile is adjudicated delinquent for one of the crimes listed in Section 43-21-261(9), the name and address of the juvenile should be made available to the public. Hudson, May 8, 1995, A.G. Op. #95-0185.

For acts which would be a felony if committed by an adult or for possession of a firearm, Section 43-21-261 requires two separate adjudications. Hudson, May 8, 1995, A.G. Op. #95-0185.

If two petitions are filed at the same time and two adjudications made, the name and address of the juvenile should be made available to the public. If only one adjudication is made on the first petition alleging delinquency, even where more than one offense is charged in that petition, the name and address should not be made available to the public, except for adjudication for offenses specified in Section 43-21-261(9). Hudson, May 8, 1995, A.G. Op. #95-0185.

The justice court record of a juvenile who is arrested and charged with DUI is a public record until and unless a court orders the charge nonadjudicated. Little, Oct. 6, 2000, A.G. Op. #2000-0592.

The Department of Human Services has authority to share certain records regarding allegations of abuse and neglect, including central registry contents, with the Department of Health, and this disclosure may be made without the necessity of a Youth Court Order permitting the release of that information. Thompson, Jr., Feb. 13, 2002, A.G. Op. #01-0771.

Release by law enforcement of the name and identifying information of a child reported missing or abducted would not violate the provisions of this section. Riley, Sept. 27, 2002, A.G. Op. #02-0561.

A general docket call each morning for all cases set for a hearing that day, with all parties and their attorneys present in the courtroom at the same time, would compromise the confidentiality provisions in Section 43-21-251 and this section and is therefore not legally permissible. Sigalas, Dec. 20, 2002, A.G. Op. #02-0739.

The provisions of this section, which grant to a parent, guardian, custodian (or their attorney) or the attorney representing a child in a youth court action the right to inspect the records, allow disclosure of the records without the prerequisite of an order from the youth court. Taylor, July 30, 2004, A.G. Op. 04-0370.

RESEARCH REFERENCES

Law Reviews. 1987 Mississippi Supreme Court Review, Youth Court Act. 57 Miss. L. J. 515, August, 1987.

Comment: Revealing Mississippi Youth Court: The Consequences of Lifting Confidentiality Requirements on Juvenile Justice in Mississippi, 71 Miss. L.J. 999, Spring, 2002.

§ 43-21-263. Sealing of records.

(1) The youth court may order the sealing of records involving children:

(a) if the child who was the subject of the cause has attained twenty (20) years of age;

(b) if the youth court dismisses the cause; or

(c) if the youth court sets aside an adjudication in the cause.

(2) The youth court may, at any time, upon its own motion or upon application of a party to a youth court cause, order the sealing or unsealing of the records involving children.

SOURCES: Laws, 1979, ch. 506, § 29; Laws, 1980, ch. 550, § 12, eff from and after July 1, 1980.

Cross References — Social records, generally, see § 43-21-251.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

§ 43-21-265. Destruction of records.

The youth court, in its discretion, may order the destruction of any records involving children except medical or mental health examinations as defined in Section 43-21-253. This order shall be directed to all persons maintaining the records, shall order their physical destruction by an appropriate means specified by the youth court and shall require the persons to file with the youth court a written report of compliance with the order. No records, however, may be destroyed without the approval of the director of the department of archives and history.

SOURCES: Laws, 1979, ch. 506, § 30; Laws, 1980, ch. 550, § 13; Laws, 1981, ch. 501, § 24, eff from and after July 1, 1981.

Editor's Note — Section 43-21-253, referred to in this section, was repealed by Laws, 1997, ch. 440, § 7, effective from and after July 1, 1997. For present similar provisions, see §§ 43-21-251(c)(ii) and (iii).

Cross References — Archives and Records Management Law, generally, see §§ 25-59-1 et seq.

For requirement that consent of director of department of archives and history be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

Expungement of minor's conviction of purchasing light wine or beer, see § 67-3-70.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. In general.

Records of criminal offenses are kept pursuant to § 45-27-1. The legislature of Mississippi has specifically authorized expungement of criminal offender records in limited cases-youth court cases, §§ 43-21-159 and 43-21-265; first offense misdemeanor convictions occurring prior to age 23, § 99-19-71; drug possession convictions occurring prior to age 26, § 41-29-150; purchase of alcoholic beverages by one under age 21, § 67-3-70; and municipal court convictions, § 21-23-7. Expungement of felony convictions which arose pursuant to guilty pleas are governed by § 99-15-57 which provides that any person who pled guilty within 6 months prior to the effective date of § 99-15-26 may apply to the court for an order expunging his or her criminal records. Under §§ 99-15-57 and 99-15-26 a circuit court has the power to expunge a felony conviction pursuant to a guilty plea under certain conditions. Accordingly, a petitioner who pled guilty to the felony of burglary might have been eligible for relief pursuant to §§ 99-15-57 and 99-15-26 if his guilty plea had occurred on or after October 1, 1982, that being the earliest date to satisfy the "within 6 months prior to" March 31, 1983, requirement of § 99-15-57. However, the petitioner pleaded guilty to burglary on October 9, 1979, 3 years prior to October 1, 1982, and admitted that he did not fall within the criterion in any of the statutes authorizing expungement, and thus the trial court did not err in denying his petition for expungement. Caldwell v. State, 564 So. 2d 1371 (Miss. 1990).

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1

§ 43-21-267. Penalty for violation.

(1) Any person who shall disclose or encourage the disclosure of any records involving children or the contents thereof without the proper authorization under this chapter shall be guilty of a misdemeanor and punished, upon conviction, by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment in the county jail of not more than one (1) year or by both such fine and imprisonment.

(2) Nothing herein shall prevent the youth court from finding in civil contempt, as provided in Section 43-21-153, any person who shall disclose any records involving children or the contents thereof without the proper authorization under this chapter.

SOURCES: Laws, 1979, ch. 506, § 31, eff from and after July 1, 1979.

Cross References — Disclosure of record involving children from youth services department central registry, see § 43-21-257.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

ATTORNEY GENERAL OPINIONS

Youth court judge may authorize release of information to schools concerning juvenile records of any student when judge finds that such disclosure is required for public safety and finds that health or safety of that student or other students in school may be affected if information is not made available to school officials. Bennett Nov. 3, 1993, A.G. Op. #93-0779.

CUSTODY AND DETENTION

SEC.
43-21-301. Custody orders.
43-21-303. Taking into custody without a custody order.
43-21-305. Noncustodial interrogation.
43-21-307. Temporary custody.
43-21-309. Detention and shelter hearings.

43-21-311. Rights in custody.
43-21-313. Release from custody upon change of circumstances.
43-21-315. Designation of facilities.
43-21-317. Repealed.
43-21-319. Correctional facility for juveniles in need of supervision authorized to be built in Tallahatchie County.
43-21-321. Health screening required upon admission to juvenile detention center; development of written procedures for admission; adherence to certain minimum juvenile detention standards; provision of educational services to detained students; other programs and services.
43-21-323. Juvenile Detention Facilities Monitoring Unit established; duties and responsibilities; confidentiality of records of monitor and communications of reporter.
43-21-324. Training for all Juvenile Facilities Monitoring Unit employees and juvenile detention center administrators.
43-21-325. Department of Public Safety authorized to carry out provisions of federal Juvenile Justice and Delinquency Prevention Act of 2002; penalties for certain individuals who interfere with department's performance of its duties.

§ 43-21-301. Custody orders.

(1) No court other than the youth court shall issue an arrest warrant or custody order for a child in a matter in which the youth court has exclusive original jurisdiction but shall refer the matter to the youth court.

(2) Except as otherwise provided, no child in a matter in which the youth court has exclusive original jurisdiction shall be taken into custody by a law enforcement officer, the Department of Human Services, or any other person unless the judge or his designee has issued a custody order to take the child into custody.

(3) The judge or his designee may require a law enforcement officer, the Department of Human Services, or any suitable person to take a child into custody for a period not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays.

(a) Custody orders under this subsection may be issued if it appears that there is probable cause to believe that:

(i) The child is within the jurisdiction of the court;

(ii) Custody is necessary because of any of the following reasons: the child is endangered, any person would be endangered by the child, to ensure the child's attendance in court at such time as required, or a parent, guardian or custodian is not available to provide for the care and supervision of the child; and

(iii) There is no reasonable alternative to custody.

(b) Custody orders under this subsection shall be written. In emergency cases, a judge or his designee may issue an oral custody order, but the order shall be reduced to writing within forty-eight (48) hours of its issuance.

(c) Each youth court judge shall develop and make available to law enforcement a list of designees who are available after hours, on weekends and on holidays.

(4) The judge or his designee may order, orally or in writing, the immediate release of any child in the custody of any person or agency. Except as otherwise provided in subsection (3) of this section, custody orders as provided by this chapter and authorizations of temporary custody may be written or oral, but, if oral, reduced to writing as soon as practicable. The written order shall:

(a) Specify the name and address of the child, or, if unknown, designate him or her by any name or description by which he or she can be identified with reasonable certainty;

(b) Specify the age of the child, or, if unknown, that he or she is believed to be of an age subject to the jurisdiction of the youth court;

(c) Except in cases where the child is alleged to be a delinquent child or a child in need of supervision, state that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), also state that (i) reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (ii) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody. If the court makes a finding in accordance with (ii) of this paragraph, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.

(d) State that the child shall be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;

(e) State the date issued and the youth court by which the order is issued; and

(f) Be signed by the judge or his designee with the title of his office.

(5) The taking of a child into custody shall not be considered an arrest except for evidentiary purposes.

(6)(a) No child who has been accused or adjudicated of any offense that would not be a crime if committed by an adult shall be placed in an adult jail or lockup. An accused status offender shall not be held in secure detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance, excluding Saturdays, Sundays and statutory state holidays, except under the following circumstances: a status offender may be held in secure detention for violating a valid court order pursuant to the criteria as established by the federal Juvenile Justice and Delinquency Prevention Act of 2002, and any subsequent amendments thereto, and out-of-state runaways may be detained pending return to their home state.

(b) No accused or adjudicated juvenile offender, except for an accused or adjudicated juvenile offender in cases where jurisdiction is waived to the adult criminal court, shall be detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.

(c) If any county violates the provisions of paragraph (a) or (b) of this subsection, the state agency authorized to allocate federal funds received pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 2750 (codified in scattered Sections of 5, 18, 42 USCS), shall withhold the county's share of such funds.

(d) Any county that does not have a facility in which to detain its juvenile offenders in compliance with the provisions of paragraphs (a) and (b) of this subsection may enter into a contractual agreement to detain or place into custody the juvenile offenders of that county with any county or municipality that does have such a facility, or with the State of Mississippi, or with any private entity that maintains a juvenile correctional facility.

(e) Notwithstanding the provisions of paragraphs (a), (b), (c) and (d) of this subsection, all counties shall be allowed a one-year grace period from March 27, 1993, to comply with the provisions of this subsection.

SOURCES: Laws, 1979, ch. 506, § 32; Laws, 1985, ch. 486, § 4; Laws, 1993, ch. 439, § 1; Laws, 2004, ch. 417, § 1; Laws, 2006, ch. 539, § 2; Laws, 2012, ch. 564, § 2, eff from and after July 1, 2012.

Cross References — Temporary custody, see § 43-21-307.

Detention and shelter hearings, see § 43-21-309.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

Federal Aspects — Juvenile Justice and Delinquency Prevention Act of 2002, see 42 USCS §§ 5601 et seq.

JUDICIAL DECISIONS

1. In general.
2. Judge failed to conform order.

1. In general.

Custody award in favor of a father was vacated on appeal because a youth court had given the maternal grandparents temporary custody earlier, as under Miss. Code Ann. § 43-21-151 and Miss. Code Ann. § 43-21-301(1), the youth court had exclusive jurisdiction to determine custody; however, the issues of child support and paternity were affirmed since the grandparents were not necessary parties to such. Thomas v. Byars, 947 So. 2d 375 (Miss. Ct. App. 2007).

Police officer did not violate state youth court law by allegedly taking 14-year-old into custody for driving his parents' car without license, without order from youth court, as youth court did not have exclusive original jurisdiction over traffic offenses. White v. Walker, 950 F.2d 972 (5th Cir. 1991).

2. Judge failed to conform order.

Judge's actions, involving the issuance of an ex parte temporary change of child custody order, not only constituted willful misconduct in violation of the state constitution and various canons of the code of judicial conduct, but also violated state laws and rules; the order did not conform to Miss. Code Ann. § 43-21-301(4), a need for emergency medical care was insufficient reason to award temporary custody in light of Miss. Code Ann. § 41-41-3(1)(b), and the order was not mailed to all parties as required by Miss. Code Ann. § 43-21-111(5). Miss. Comm'n on Judicial Performance v. Perdue, 853 So. 2d 85 (Miss. 2003).

RESEARCH REFERENCES

ALR. Failure of state or local government entity to protect child abuse victim as violation of federal constitutional right. 79 A.L.R. Fed. 514.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 7 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 7-9 (orders — awarding temporary custody of minor pending final hearing); Form 10 (order — for detention of minor in city prison); Form 39 (order — fixing time of hearing — directing temporary commitment of child pending hearing); Form 64 (order — for service of citation in custody hearing by publication).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

CJS. 43 C.J.S., Infants §§ 61-63, 65 et seq.

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

§ 43-21-303. Taking into custody without a custody order.

(1) No child in a matter in which the youth court has original exclusive jurisdiction shall be taken in custody by any person without a custody order except that:

(a) a law enforcement officer may take a child in custody if:

(i) grounds exist for the arrest of an adult in identical circumstances; and

(ii) such law enforcement officer has probable cause to believe that custody is necessary as defined in Section 43-21-301(3)(b); and

(iii) such law enforcement officer can find no reasonable alternative to custody; or

(b) a law enforcement officer or an agent of the department of public welfare may take a child into custody if:

(i) there is probable cause to believe that the child is in immediate danger of personal harm; and

(ii) such law enforcement officer or agent has probable cause to believe that immediate custody is necessary as defined in Section 43-21-301(3)(b); and

(iii) such law enforcement officer or agent can find no reasonable alternative to custody.

(c) Any other person may take a child in custody if grounds exist for the arrest of an adult in identical circumstances. Such other person shall immediately surrender custody of the child to the proper law enforcement officer who shall thereupon continue custody only as provided in subsection (1)(a) of this section.

(2) When it is necessary to take a child into custody, the least restrictive custody should be selected.

(3) Unless the child is immediately released, the person taking the child into custody shall immediately notify the judge or his designee. A person taking a child into custody shall also make continuing reasonable efforts to notify the child's parent, guardian or custodian and invite the parent, guardian or custodian to be present during any questioning.

(4) A child taken into custody shall not be held in custody for a period longer than reasonably necessary, but not to exceed twenty-four (24) hours, and shall be released to his parent, guardian or custodian unless the judge or his designee authorizes temporary custody.

SOURCES: Laws, 1979, ch. 506, § 33; Laws, 1980, ch. 550, § 14, eff from and after July 1, 1980.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Particular applications.
3. Interrogation of child.

4.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Juvenile's argument on appeal that the deputy did not have probable cause to arrest the juvenile for creating a disturbance at an alternative school was without merit because the deputy was making the arrest pursuant to a custody order that had been issued to the school by a youth court after the school had called and reported the disturbance. In the Interest of L.C.A., 938 So. 2d 300 (Miss. Ct. App. 2006).

Defendant's convictions for burglary and armed robbery were both proper where he was 18-years-old at the time he gave his statement, Miss. Code Ann. § 43-21-303(3), and where, even had he only been 17-years-old, he could have been questioned without his mother's presence pursuant to Miss. Code Ann. § 43-21-151(3) because the youth court did not have original jurisdiction concerning any act committed by a child that carried the possible criminal penalty of life imprisonment. Brown v. State, 839 So. 2d 597 (Miss. Ct. App. 2003).

Youth court does not have exclusive original jurisdiction over traffic offenses. White v. Walker, 950 F.2d 972 (5th Cir. 1991).

2. Particular applications.

Police officer had probable cause to arrest a thirteen-year-old juvenile for resisting arrest for disorderly conduct in that the juvenile refused to comply with the officer's reasonable instructions to put the juvenile's hands on a patrol car, when the officer responded to a report that gunshots had been fired in the area from a car that matched the description of the car defendant was standing near, and in fact struggled with the officer and other responding officers. S.M.K.S. v. Youth Court of Union County, — So. 3d —, 2014 Miss. App. LEXIS 2 (Miss. Ct. App. Jan. 7, 2014).

Because defendant was 17 years old at the time the alleged felony offense of accessory after the fact to murder was committed, jurisdiction was proper in the circuit court pursuant to Miss. Code Ann. § 43-21-151 (Rev. 2004). Moreover, although defendant argued that the statements he made to the police were inadmissible because the police failed to take his statements in compliance with the requirements of the Youth Court Act, Miss. Code Ann. § 43-21-303(3) (Rev. 2004), the youth court did not have jurisdiction over defendant's case, and since the Youth Court Act did not apply, parental notification was unnecessary. Miller v. State, 18 So. 3d 898 (Miss. Ct. App. 2009).

Defendant's age, 17 years, did not require that he have parent present during interrogation in view of fact that he was charged with murder and had been certified to circuit court on another crime. Blue v. State, 674 So. 2d 1184 (Miss. 1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517 (1996).

Because defendant was charged with murder, circuit court was court of "original jurisdiction" and provisions for having a parent present during interrogation and actions in the youth court were thus inapplicable. Blue v. State, 674 So. 2d 1184 (Miss. 1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517 (1996).

Police officer did not violate state youth court law by allegedly taking 14-year-old into custody for driving his parents' car without license, without order from youth court, as youth court did not have exclusive original jurisdiction over traffic offenses. White v. Walker, 950 F.2d 972 (5th Cir. 1991).

A police department's refusal of a mother's request to be present during the interrogation of her 17-year-old son was a violation of § 43-21-303(3) which necessitated reversal of the son's conviction. M.A.C. v. Harrison County Family Court, 566 So. 2d 472 (Miss. 1990).

3. Interrogation of child.

Although defendant was 14 years old when interviewed by the police without the presence of a parent, an attorney, or other friendly adult, defendant's statement was admissible because defendant was accused of murder and, as such, he was no longer afforded the protections of the Youth Court Act, Miss. Code Ann. § 43-21-303. Evans v. State, 109 So. 3d 1056 (Miss. Ct. App. 2011), reversed by, remanded by 109 So. 3d 1044, 2013 Miss. LEXIS 31 (Miss. 2013).

Subsection (3) of this section does not apply when a minor is charged with an offense over which the circuit court has jurisdiction. Hill v. State, 749 So. 2d 1143 (Miss. Ct. App. 1999).

4.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

The failure of police officers to obtain prior authorization from the county youth court before incarcerating a juvenile as required by this section [Code 1972, § 43-21-13] did not reach constitutional proportions, and was therefore insufficient to constitute a violation of a right cognizable under 42 USCS § 1983. Hamilton v. Chaffin, 506 F.2d 904 (5th Cir. 1975).

This section is not of general applicability, but is limited to children whose cases are in youth court. Nelson v. Tullos, 323 So. 2d 539 (Miss. 1975).

§ 43-21-305. Noncustodial interrogation.

A law enforcement officer may stop any child abroad in a public place whom the officer has probable cause to believe is within the jurisdiction of the youth court and may question the child as to his name, address and explanation of his actions.

SOURCES: Laws, 1979, ch. 506, § 34, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

§ 43-21-307. Temporary custody.

The judge or his designee may authorize the temporary custody of a child taken into custody for a period of not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays if the judge or his designee finds there are grounds to issue a custody order as defined in Section

43-21-301 and such custody order complies with the detention requirements provided in Section 43-21-301(6).

SOURCES: Laws, 1979, ch. 506, § 35; Laws, 1993, ch. 439, § 2, eff from and after passage (approved March 27, 1993).

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 7-9 (orders — awarding temporary custody of minor pending final hearing); Form 39 (order — fixing time of hearing — directing temporary commitment of child pending hearing).

§ 43-21-309. Detention and shelter hearings.

(1) A child who has been ordered or taken into custody may be held in custody for longer than temporary custody if:

(a) A written complaint or petition has been filed; and

(b) A court order has been entered for continued custody following a review of that custody at a detention hearing in delinquency and child in need of supervision cases and at a shelter hearing in abuse and neglect cases.

(2) Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child; to his or her parent, guardian or custodian; to his or her guardian ad litem, if any; and to his or her counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.

(3) At the detention or shelter hearing, all parties present shall have the right to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form.

(4)(a) At the conclusion of the detention or shelter hearing, the youth court shall order that the child be released to the custody of the child's parent, guardian or custodian unless the youth court finds and the detention or shelter hearing order recites that:

(i) There is probable cause that the youth court has jurisdiction; and

(ii) Custody is necessary as defined in Section 43-21-301(3)(b).

(b) In the case of a shelter hearing, the shelter hearing order shall further recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interest of the child, and, unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:

(i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or

(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and there is no reasonable alternative to custody.

(c) In the event that the court makes a finding in accordance with subparagraph (ii), the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.

(5) The child with advice of counsel may waive in writing the time of the detention hearing or the detention hearing itself. The child's guardian ad litem, and parent, guardian or custodian, and child may waive in writing the time of the shelter hearing or the shelter hearing itself. If the child has not reached his tenth birthday, the child's consent shall not be required.

(6) Any order placing a child into custody shall comply with the requirements provided in Section 43-21-301.

SOURCES: Laws, 1979, ch. 506, § 36; Laws, 1980, ch. 550, § 15; Laws, 1985, ch. 486, § 5; Laws, 1993, ch. 439, § 3; Laws, 1997, ch. 440, § 9; Laws, 1998, ch. 516, § 20; Laws, 2004, ch. 417, § 2, eff from and after July 1, 2004.

Cross References — Exception for detention and shelter hearings from requirement that complete record be kept of hearings, see § 43-21-203.

Court records, generally, see § 43-21-251.

Showing that custody is necessary, see § 43-21-301.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Proc. Rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Notice.

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Minors were entitled to some form of due process prior to being placed in a detention center that placed extensive restrictions on its residents. In re M.I., 519 So. 2d 433 (Miss. 1988).

2. Notice.

Because a reverend was not the parent, guardian or custodian, guardian ad litem, or counsel to three minor children, reasonable oral notice of a hearing was not sufficient, under Miss. Code Ann. § 43-21-309. In re Hines, 978 So. 2d 1275 (Miss. 2008).

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

In proceeding to commit minor for delinquency the child and its parents are entitled to hearing and trial. Bryant v. Brown, 151 Miss. 398, 118 So. 184, 60 A.L.R. 1325 (1928).

Parents have primary right to custody and control of minor children but on failure to properly rear and educate child state may take control of it. Bryant v. Brown, 151 Miss. 398, 118 So. 184, 60 A.L.R. 1325 (1928).

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 10 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 7-9 (orders — awarding temporary custody of minor pending final hearing); Form 10 (order — for detention of minor in city prison); Form 37 (order — for hearing, investigation, and summons — delinquency or dependency of minor child); Form 38 (order — for hearing and citation — to determine delinquency or dependency of minor child); Form 39 (order — fixing time of hearing — directing temporary commitment of child pending hearing); Form 51 (summons — to appear at hearing before juvenile court — to parents or guardian); Form 54 (subpoena — to appear in juvenile court); Form 55 (notice — hearing on petition to commence proceedings — right to counsel); Form 57 (notice — hearing — to persons sustaining damages by acts of minor — by probation officer); Form 58 (proof of service — notice and petition); Forms 59, 60 (waiver — by custodian of child — of service of notice — consent to adjudication); Forms 61-63 (citation — to custodian of child — to appear and show cause); Form 64 (order — for service of citation and custody hearing by publication).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

CJS. 43 C.J.S., Infants §§ 61-63, 65 et seq.

§ 43-21-311. Rights in custody.

(1) When a child is taken into custody, he shall immediately be informed of:

(a) The reason for his custody;

(b) The time within which review of the custody shall be held;

(c) His rights during custody including his right to counsel;

(d) All rules and regulations of the place at which he is held;

(e) The time and place of the detention hearing when the time and place is set; and

(f) The conditions of his custody which shall be in compliance with the detention requirements provided in Section 43-21-301(6).

These rights shall be posted where the child may read them, and such rights must be read to the child when he or she is taken into custody.

(2) When a child is taken into custody, the child may immediately telephone his parent, guardian or custodian; his counsel; and personnel of the youth court. Thereafter, he shall be allowed to telephone his counsel or any personnel of the youth court at reasonable intervals. Unless the judge or his designee finds that it is against the best interest of the child, he may telephone his parent, guardian or custodian at reasonable intervals.

(3) When a child is taken into custody, the child may be visited by his counsel and authorized personnel of the youth court at any time. Unless the judge or his designee finds it to be against the best interest of the child, he may be visited by his parent, guardian or custodian during visiting hours which

shall be regularly scheduled at least three (3) days per week. The youth court may establish rules permitting visits by other persons.

(4) Except for the child's counsel, guardian ad litem and authorized personnel of the youth court, no person shall interview or interrogate a child held in a detention or shelter facility unless approval therefor has first been obtained from the judge or his designee. When a child in a detention or shelter facility is represented by counsel or has a guardian ad litem, no person may interview or interrogate the child concerning the violation of a state or federal law, or municipal or county ordinance by the child unless in the presence of his counsel or guardian ad litem or with their consent.

SOURCES: Laws, 1979, ch. 506, § 37; Laws, 1993, ch. 439, § 4; Laws, 2006, ch. 539, § 3, eff from and after July 1, 2006.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. In general.

Interrogation of a juvenile in the presence only of the juvenile's parents, notwithstanding the interrogating officer's knowledge that the juvenile had counsel, did not violate § 43-21-311(4) where neither the juvenile nor his mother informed the officer of the fact that the juvenile had been represented by counsel earlier in the day or asked that counsel be present. However, where no guardian ad litem has been appointed, the better practice is to secure either the presence or the consent of the juvenile's counsel before interrogation. Smith v. State, 534 So. 2d 194 (Miss. 1988).

Under totality of circumstances, confession by juvenile is freely and voluntarily given, and is free of taint of prior improper confession, where juvenile has been warned of rights under Miranda, juvenile has verbally waived rights and agreed to talk, juvenile's mother has been called to police station before interrogation begins, has been advised of nature of charges, is given opportunity to consult with juvenile prior to questioning, and thereafter gives permission to interrogation, and juvenile then signs acknowledgment of right and waiver. In re W.R.A., 481 So. 2d 280 (Miss. 1985).

Police interrogation of child in absence of counsel representing child on unrelated charges does not violate § 43-21-311 where police conducting interrogation are unaware of representation. In re W.R.A., 481 So. 2d 280 (Miss. 1985).

Jurisdiction for prosecution of 15 year old for rape, offense potentially punishable by life sentence, is in circuit court, to exclusion of youth court, notwithstanding defendant's claim of interrogation in violation of Youth Court Act (§ 43-21-311). Winters v. State, 473 So. 2d 452 (Miss. 1985).

RESEARCH REFERENCES

ALR. Right of bail in proceedings in juvenile courts. 53 A.L.R.3d 848.

§ 43-21-313. Release from custody upon change of circumstances.

(1) A child held in custody under order of the youth court shall be released upon a finding that a change of circumstances makes continued custody unnecessary.

(2) A written request for the release of the child from custody, setting forth the changed circumstances, may be filed by the child; by the child's parent, guardian or custodian; by the child's counsel; or by the child's guardian ad litem, if any.

(3) Based upon the facts stated in the request, the judge may direct that a hearing be held at a date, time and place as fixed by the youth court. Reasonable notice of the hearing shall be given to the child; his parent, guardian or custodian; his counsel; and his guardian ad litem, if any, prior to the hearing. At the hearing, upon receiving evidence, the youth court may grant or deny the request.

(4) A child held in custody in violation of Section 43-21-301(6) shall be immediately transferred to a proper juvenile facility.

SOURCES: Laws, 1979, ch. 506, § 38; Laws, 1993, ch. 439, § 5, eff from and after passage (approved March 27, 1993).

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-315. Designation of facilities.

(1) The youth court shall, by general order or rule of court, designate the available detention or shelter facilities to which children shall be delivered when taken into custody. Copies of the order or rule shall be made available to the Department of Human Services and all law enforcement agencies within the territorial jurisdiction of the youth court.

(2) Except as otherwise provided in this chapter, unless jurisdiction is transferred, no child shall be placed in any jail or place of detention of adults by any person or court unless the child shall be physically segregated from other persons not subject to the jurisdiction of the youth court and the physical arrangement of such jail or place of detention of adults prevents such child from having substantial contact with and substantial view of such other persons; but in any event, the child shall not be confined anywhere in the same cell with persons not subject to the jurisdiction of the youth court. Any order placing a child into custody shall comply with the detention requirements

provided in Section 43-21-301(6). This subsection shall not be construed to apply to commitments to the training school under Section 43-21-605(1)(g)(iii).

(3) Any child who is charged with a hunting or fishing violation, a traffic violation, or any other criminal offense for which the youth court shall have power on its own motion to remove jurisdiction from any criminal court, may be detained only in the same facilities designated by the youth court for children within the jurisdiction of the youth court.

(4) After a child is ordered into custody, the youth court may arrange for the custody of the child with any private institution or agency caring for children, may commit the child to the Department of Mental Health pursuant to Section 41-21-61 et seq., or may order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of such child. Provided, however, that the care, custody and maintenance of such child shall be within the statutory authorization and the budgetary means of such institution or facility.

SOURCES: Laws, 1979, ch. 506, § 39; Laws, 1980, ch. 550, § 16; Laws, 1993, ch. 439, § 6; Laws, 1996, ch. 430, § 1, eff from and after passage (approved March 25, 1996).

Cross References — Commitment to public treatment facility, see § 41-21-63.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

ATTORNEY GENERAL OPINIONS

Youth court judges have the power to designate youth detention facilities and the custodians for such facilities, and there is no statutory requirement that a sheriff operate a youth detention facility within the sheriff's county. Ferrell, July 18, 1997, A.G. Op. #97-0376.

RESEARCH REFERENCES

ALR. When, under terms of Federal Youth Corrections Act (18 USCS §§ 5005 et seq.), must prisoner serving youth corrections sentence be segregated from adult prison population. 59 A.L.R. Fed. 746.

§ 43-21-317. Repealed.

Repealed by Laws, 2000, ch. 570, § 2, eff from and after July 1, 2001.

[Laws, 1994, ch. 359, § 1; Laws, 1995, ch. 546, § 1; reenacted and amended, Laws, 1998, ch. 379, § 1; Laws, 1999, ch. 554, § 1; Laws, 2000, ch. 570, § 1, eff from and after July 1, 2000.]

Editor's Note — Laws of 1995, ch. 546, § 4, provided for the repeal of this section effective on July 1, 1997. Subsequently, Laws of 1997, ch. 494, § 3 amended Laws of 1995, ch. 546, § 4 so as to extend the repeal date until July 1, 1998, and Laws of 1998, ch. 379, § 2 amended Laws of 1995, ch. 546, § 4 so as to extend the repeal date until

July 1, 1999. Laws of 1999, ch. 554, § 2, further extended the repeal date to July 1, 2000. Laws of 2000, ch. 570, § 2, further extended the repeal date to July 1, 2001.

Former § 43-21-317 provided for a Juvenile Detention Fund. Before the repeal of this section took effect, the balance of funds in the Juvenile Detention Fund was transferred to the Budget Contingency Fund by Laws of 2001, ch. 519.

§ 43-21-319. Correctional facility for juveniles in need of supervision authorized to be built in Tallahatchie County.

In addition to any other provisions of law, it shall be lawful for a correctional facility constructed in Tallahatchie County to house juveniles who have been found delinquent or in need of supervision. The juveniles shall be housed in a correctional facility constructed in Tallahatchie County. The juveniles housed under the provisions of this section and sentenced under the laws of the federal government or its territories or another state shall be under the jurisdiction of the youth or juvenile court or committing jurisdiction in which the juvenile was found to be delinquent or in need of supervision.

SOURCES: Laws, 1999, ch. 586, § 2, eff from and after passage (approved April 22, 1999

§ 43-21-321. Health screening required upon admission to juvenile detention center; development of written procedures for admission; adherence to certain minimum juvenile detention standards; provision of educational services to detained students; other programs and services.

(1) All juveniles shall undergo a health screening within one (1) hour of admission to any juvenile detention center, or as soon thereafter as reasonably possible. Information obtained during the screening shall include, but shall not be limited to, the juvenile's:

- (a) Mental health;
- (b) Suicide risk;
- (c) Alcohol and other drug use and abuse;
- (d) Physical health;
- (e) Aggressive behavior;
- (f) Family relations;
- (g) Peer relations;
- (h) Social skills;
- (i) Educational status; and
- (j) Vocational status.

(2) If the screening instrument indicates that a juvenile is in need of emergency medical care or mental health intervention services, the detention staff shall refer those juveniles to the proper health care facility or community mental health service provider for further evaluation, as soon as reasonably possible. If the screening instrument, such as the Massachusetts Youth Screening Instrument version 2 (MAYSI-2) or other comparable mental health screening instrument indicates that the juvenile is in need of emergency

medical care or mental health intervention services, the detention staff shall refer the juvenile to the proper health care facility or community mental health service provider for further evaluation, recommendation and referral for treatment, if necessary.

(3) All juveniles shall receive a thorough orientation to the center's procedures, rules, programs and services. The intake process shall operate twenty-four (24) hours per day.

(4) The directors of all of the juvenile detention centers shall amend or develop written procedures for admission of juveniles who are new to the system. These shall include, but are not limited to, the following:

(a) Determine that the juvenile is legally committed to the facility;

(b) Make a complete search of the juvenile and his possessions;

(c) Dispose of personal property;

(d) Require shower and hair care, if necessary;

(e) Issue clean, laundered clothing, as needed;

(f) Issue personal hygiene articles;

(g) Perform medical, dental and mental health screening;

(h) Assign a housing unit for the juvenile;

(i) Record basic personal data and information to be used for mail and visiting lists;

(j) Assist juveniles in notifying their families of their admission and procedures for mail and visiting;

(k) Assign a registered number to the juvenile; and

(*l*) Provide written orientation materials to the juvenile.

(5) If a student's detention will cause him or her to miss one or more days of school during the academic school year, the detention center staff shall notify school district officials where the detainee last attended school by the first school day following the student's placement in the facility. Detention center staff shall not disclose youth court records to the school district, except as provided by Section 43-21-261.

(6) All juvenile detention centers shall adhere to the following minimum standards:

(a) Each center shall have a manual that states the policies and procedures for operating and maintaining the facility, and the manual shall be reviewed annually and revised as needed;

(b) Each center shall have a policy that specifies support for a drug-free workplace for all employees, and the policy shall, at a minimum, include the following:

(i) The prohibition of the use of illegal drugs;

(ii) The prohibition of the possession of any illegal drugs except in the performance of official duties;

(iii) The procedure used to ensure compliance with a drug-free workplace policy;

(iv) The opportunities available for the treatment and counseling for drug abuse; and

(v) The penalties for violation of the drug-free workplace policy;

(c) Each center shall have a policy, procedure and practice that ensures that personnel files and records are current, accurate and confidential;

(d) Each center shall promote the safety and protection of juvenile detainees from personal abuse, corporal punishment, personal injury, disease, property damage and harassment;

(e) Each center shall have written policies that allow for mail and telephone rights for juvenile detainees, and the policies are to be made available to all staff and reviewed annually;

(f) Center food service personnel shall implement sanitation practices based on State Department of Health food codes;

(g) Each center shall provide juveniles with meals that are nutritionally adequate and properly prepared, stored and served according to the State Department of Health food codes;

(h) Each center shall offer special diet food plans to juveniles under the following conditions:

(i) When prescribed by appropriate medical or dental staff; or

(ii) As directed or approved by a registered dietitian or physician; and

(iii) As a complete meal service and not as a supplement to or choice between dietary meals and regular meals;

(i) Each center shall serve religious diets when approved and petitioned in writing by a religious professional on behalf of a juvenile and approved by the juvenile detention center director;

(j) Juvenile detention center directors shall provide a written method of ensuring regular monitoring of daily housekeeping, pest control and sanitation practices, and centers shall comply with all federal, state and local sanitation and health codes;

(k) Juvenile detention center staff shall screen detainees for medical, dental and mental health needs during the intake process. If the screening indicates that medical, dental or mental health assistance is required or necessary, or if the intake officer deems it necessary, the detainee shall be provided access to appropriate health care professionals for evaluation and treatment. A medical history of all detainees shall be completed by the intake staff of the detention center immediately after arrival at the facility by using a medical history form which shall include, but not be limited to, the following:

(i) Any medical, dental and mental health treatments and medications the juvenile is taking;

(ii) Any chronic health problems such as allergies, seizures, diabetes, hearing or sight loss, hearing conditions or any other health problems; and

(iii) Documentation of all medications administered and all health care services rendered;

(*l*) Juvenile detention center detainees shall be provided access to medical care and treatment while in custody of the facility;

(m) Each center shall provide reasonable access by youth services or county counselors for counseling opportunities. The youth service or county counselor shall visit with detainees on a regular basis;

(n) Juvenile detention center detainees shall be referred to other counseling services when necessary including: mental health services; crisis intervention; referrals for treatment of drugs and alcohol and special offender treatment groups;

(o) Each center shall have a policy that restricts the time a youth can be confined to a locked cell to the following circumstances:

(i) When a youth is sleeping or sick;

(ii) When a youth is on punishment;

(iii) When there is an emergency that poses a threat to the security of the center;

(iv) When the youth has voluntarily requested cell confinement;

(v) When no less restrictive alternative exists and the youth is placed in protective custody because of a threat to his safety;

(p) Local school districts shall work collaboratively with juvenile detention center staff to provide special education services as required by state and federal law. Upon the written request of the youth court judge for the county in which the detention center is located, a local school district in the county in which the detention center is located, or a private provider agreed upon by the youth court judge and sponsoring school district, shall provide a certified teacher to provide educational services to detainees. The youth court judge shall designate said school district which shall be defined as the sponsoring school district. The local home school district shall be defined as the school district where the detainee last attended prior to detention. Teacher selection shall be in consultation with the youth court judge. The Legislature shall annually appropriate sufficient funds for the provision of educational services, as provided under this section, to detainees in detention centers;

(q) The sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, shall be responsible for providing the instructional program for the detainee while in detention. After forty-eight (48) hours of detention, excluding legal holidays and weekends, the detainee shall receive the following services which may be computer-based:

(i) Diagnostic assessment of grade-level mastery of reading and math skills;

(ii) Individualized instruction and practice to address any weaknesses identified in the assessment conducted under subparagraph (i), provided such detainee is in the center for more than forty-eight (48) hours; and

(iii) Character education to improve behavior;

(r) No later than the tenth day of detention, the detainee shall begin an extended detention education program. A team consisting of a certified teacher provided by the local sponsoring school district or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, and the youth court counselor or representative will develop an individualized education program for the detainee, where appropriate as determined by the teacher of the sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program;

(s) The sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, shall provide the detention center with an appropriate and adequate computer lab to serve detainees. The Legislature shall annually appropriate sufficient funds to equip and maintain the computer labs. The computer lab shall become the property of the detention centers and the sponsoring school districts shall maintain and update the labs;

(t) The Mississippi Department of Education will collaborate with the appropriate state and local agencies, juvenile detention centers and local school districts to ensure the provision of educational services to every student placed in a juvenile detention center. The Mississippi Department of Education has the authority to develop and promulgate policies and procedures regarding financial reimbursements to the sponsoring school district from school districts that have students of record or compulsory-school-age residing in said districts placed in a youth detention center. Such services may include, but not be limited to: assessment and math and reading instruction, character education and behavioral counseling. The Mississippi Department of Education shall work with the appropriate state and local agencies, juvenile detention centers and local school districts to annually determine the proposed costs for educational services to youth placed in juvenile detention centers and annually request sufficient funding for such services as necessary;

(u) Recreational services shall be made available to juvenile detainees for purpose of physical exercise;

(v) Juvenile detention center detainees shall have the opportunity to participate in the practices of their religious faith as long as such practices do not violate facility rules and are approved by the director of the juvenile detention center;

(w) Each center shall provide sufficient space for a visiting room, and the facility shall encourage juveniles to maintain ties with families through visitation, and the detainees shall be allowed the opportunity to visit with the social workers, counselors and lawyers involved in the juvenile's care;

(x) Juvenile detention centers shall ensure that staffs create transition planning for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's detention center education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers; the transition team will work together to help the detainee successfully transition back into the home school district once released from detention. The transition team will consist of a certified teacher provided by the local sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, the school attendance officer assigned to the local home school district, and the youth court counselor or representative. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program; and

(y) The Juvenile Detention Facilities Monitoring Unit shall monitor the detention facilities for compliance with these minimum standards, and no child shall be housed in a detention facility the monitoring unit determines is substantially out of compliance with the standards prescribed in this subsection.

(7) Programs and services shall be initiated for all juveniles once they have completed the admissions process.

(8) Programs and professional services may be provided by the detention staff, youth court staff or the staff of the local or state agencies, or those programs and professional services may be provided through contractual arrangements with community agencies.

(9) Persons providing the services required in this section must be qualified or trained in their respective fields.

(10) All directors of juvenile detention centers shall amend or develop written procedures to fit the programs and services described in this section.

SOURCES: Laws, 2002, ch. 602, § 1; Laws, 2005, ch. 471, § 5; Laws, 2006, ch. 539, § 4; Laws, 2007, ch. 568, § 1; Laws, 2008, ch. 481, § 1; Laws, 2011, ch. 510, § 1; Laws, 2012, ch. 564, § 3, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the last sentence of (6)(o) by substituting "as provided under this section" for "as provided under this act." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (6)(o). The word "this act" was changed to "this section". The Joint Committee ratified the correction at its July 13, 2009, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (1) by substituting "Section 43-21-605" for "Section 41-21-605." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Editor's Note — Laws of 2002, ch. 602, § 2, provides as follows:

"SECTION 2. (1) There is established a Juvenile Detention Facilities Task Force, the duties of which shall be to develop uniform standards for juvenile detention facilities in the state. The uniform standards shall address the following areas, at a minimum:

"(a) Operations of juvenile detention facilities;

"(b) Programs and services provided by juvenile detention facilities; and

"(c) Training of juvenile detention facility staff.

"The task force shall utilize the Standards for Juvenile Detention Facilities, 3rd Edition, developed by the American Correctional Association in cooperation with the

Commission on Accreditation for Corrections, as a guide for developing the uniform standards.

"(2) The task force shall consist of fifteen (15) members as follows:

"(a) Two (2) administrators of juvenile detention centers, appointed by the Executive Director of the Division of Public Safety Planning of the Department of Public Safety;

"(b) One (1) representative of the Office of Youth Services of the Department of Human Services;

"(c) One (1) representative of the Division of Public Safety Planning of the Department of Public Safety;

"(d) One (1) representative of the State Department of Health;

"(e) One (1) representative of the Mississippi Association of Supervisors;

"(f) One (1) representative of education, appointed by the State Superintendent of Public Education;

"(g) One (1) county sheriff who is a representative of the Mississippi Sheriff's Association;

"(h) One (1) representative of a youth advocacy organization or group, appointed by the Director of the Office of Youth Services of the Department of Human Services;

"(i) One (1) youth court judge who is a representative of the Mississippi Council of Youth Court Judges;

"(j) Two (2) members of the Juvenile Justice Committee of the Mississippi House of Representatives, appointed by the Speaker of the House;

"(k) Two (2) members of the Juvenile Justice Committee of the Mississippi Senate, appointed by the Lieutenant Governor; and

"(*l*) One (1) attorney who has experience in youth court matters, appointed by the Executive Director of the Division of Public Safety Planning of the Department of Public Safety.

"(3) At its first meeting, the task force shall elect a chairman and vice chairman from its membership, and shall adopt rules for transacting its business and keeping records. If sufficient funds are available to the task force for that purpose, members of the task force may receive a per diem in the amount provided in Section 25-3-69 for each day engaged in the business of the task force, and members of the task force other than the legislative members may receive reimbursement for travel expenses incurred while engaged in official business of the task force in accordance with Section 25-3-41.

"(4) Before December 1, 2002, the task force shall make a report of its work and recommendations, and it shall submit a copy of the report to the Legislature and the Governor.

"(5) The task force shall be assigned to the Division of Public Safety Planning of the Department of Public Safety for administrative purposes only, and the Division of Public Safety Planning shall designate staff to assist the task force. The task force may solicit grants, donations and other funds, and may accept and expend any funds that are made available to the task force to carry out its purpose. However, no state general funds may be used to pay any expenses of the task force.

"(6) All agencies, departments, offices and institutions of the state, including the state universities and the community and junior colleges, shall cooperate with the task force with such assistance as requested by the task force.

"(7) After the presentation of its report to the Legislature and the Governor, the task force shall be dissolved."

Laws of 2012, ch. 564, § 4, as amended by Laws of 2014, ch. 471, § 1, provides as follows:

"SECTION 4. (1) There is established the Juvenile Detention and Alternatives Task Force. The purpose of the task force is to support the expansion of juvenile detention alternatives and utilize the proposed licensing standards that were included in the January 2014 report of the task force to make further recommendations regarding the licensure of juvenile detention facilities throughout the state.

"(2) The task force shall be composed of the following members who shall be appointed no later than July 1, 2014, if there are to be any changes made by any entity or agency that is a current member of the task force:

"(a) The statewide coordinator of the Annie E. Casey Juvenile Detention Alternatives Initiative, or his designee;

"(b) The Director of the Division of Youth Services of the Mississippi Department of Human Services, or his designee;

"(c) A representative from the Juvenile Facilities Monitoring Unit appointed by the Commissioner of the Mississippi Department of Public Safety;

"(d) Two (2) youth court judges appointed by the Mississippi Council of Youth Court Judges;

"(e) A representative from the Mississippi Sheriffs' Association appointed by the President of the Association;

"(f) Four (4) representatives from counties of this state that are engaged in the Juvenile Detention Alternatives Initiative, to be appointed by Mississippi's statewide coordinator of the Juvenile Detention Alternatives Initiative;

"(g) A representative from the Department of Mental Health appointed by the Executive Director of the Department;

"(h) Six (6) representatives from the Mississippi Juvenile Detention Directors Association appointed by the President of the Association;

"(i) Two (2) county supervisors from counties with juvenile detention centers, appointed by the President of the Mississippi Association of County Detention Supervisors;

"(j) Two (2) county administrators from counties with juvenile detention centers, appointed by the President of the Mississippi Association of Supervisors;

"(k) The State Superintendent of Education, or his designee; and

"(*l*) Two (2) representatives from state or local government, one (1) to be appointed by the Chairperson of the House Youth and Family Affairs Committee and one (1) to be appointed by the Chairperson of the Senate Judiciary B Committee.

"(3) The task force shall hold at least three (3) meetings before issuing its report and shall hold its first meeting no later than August 1, 2014, on the call of the statewide coordinator of the Annie E. Casey Juvenile Detention Alternatives Initiative, or his designee. At its first meeting, the task force shall elect a chairperson and a vice chairperson from its membership and shall adopt rules for transacting business and keeping records. All meetings of the task force will be open to the public and shall provide opportunities for input from representatives of any private or public entities that are involved with the juvenile justice system. Notice of all meetings shall be given as provided in the Open Meetings Act.

"(4) On or before November 1, 2014, the task force shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives that includes the following:

"(a) A plan for supporting juvenile detention alternatives;

"(b) A plan for reducing the financial burden incurred by counties for providing juvenile detention services, increasing cross-county collaboration, reducing duplication of services, and maximizing support from federal, state and private sources;

"(c) Plan of implementing the proposed juvenile detention licensing standards that were included in the January 2014 report of the task force, and in order to develop the plan described under this subsection, the task force shall request data from all counties that operate juvenile detention centers pertaining to, but not limited to, budgets, staffing ratios and current medical and mental health services;

"(d) A recommendation of which state agency should be authorized to promulgate, adopt and enforce the proposed licensing standards and any other regulations for juvenile detention centers, including the date all facilities should be licensed;

"(e) Any recommended legislation for consideration in the 2015 Legislative Session; and "(f) Any other issues related to juvenile detention centers or alternatives to juvenile detention deemed relevant by the task force.

"(5) The task force shall be assigned to the Division of Youth Services of the Department of Human Services for administrative purposes only, and the Division of Youth Services shall designate staff to assist the task force.

"(6) There is created an advisory group established for the purpose of providing advice, input and information to the Juvenile Detention and Alternatives Task Force. Advisory group members shall receive notice of task force meetings and shall, at the request of the Chairperson of the task force, provide assistance with research and analysis. The advisory group shall be composed of the following members who shall be appointed no later than July 15, 2014, if there are to be changes made from the current advisory board:

"(a) Two (2) representatives from children's advocacy nonprofit organizations, one (1) to be appointed by the Chairperson of the House Youth and Family Affairs Committee and one (1) to be appointed by the Chairperson of the Senate Judiciary B Committee;

"(b) Two (2) representatives of a victim's rights organization appointed by the Attorney General;

"(c) Two (2) representatives who are parents or guardians of a youth involved with the juvenile justice system, one (1) to be appointed by the Chairperson of the House Youth and Family Affairs Committee and one (1) to be appointed by the Chairperson of the Senate Judiciary B Committee;

"(d) Two (2) youths who have experience with juvenile detention appointed by the Council of Youth Court Judges;

"(e) Three (3) members appointed by the Chairperson of the Juvenile Detention and Alternatives Task Force;

"(f) Two (2) representatives who are from Mississippi public universities and have substantial experience with juvenile justice or criminal justice administration, to be appointed by the Commissioner of Higher Education;

"(g) A representative from the Mississippi Juvenile Justice Advisory Committee appointed by the Chairperson of the Committee;

"(h) A representative from the Mississippi Prosecutor's Association;

"(i) A representative from the Mississippi Public Defender Association; and

"(j) The Chairperson of the House Youth and Family Affairs Committee and the Chairperson of the Senate Judiciary B Committee, or their designees.

"(7) This section shall stand repealed on July 1, 2015.

Cross References — Establishment of Juvenile Detention Facilities Monitoring Unit, see § 43-21-323.

§ 43-21-323. Juvenile Detention Facilities Monitoring Unit established; duties and responsibilities; confidentiality of records of monitor and communications of reporter.

(1) There is established the Juvenile Detention Facilities Monitoring Unit within the Department of Public Safety to work in cooperation with the Juvenile Justice Advisory Committee described in Section 45-1-33. The unit shall be responsible for investigating, evaluating and securing the rights of children held in juvenile justice facilities, including detention centers, training schools and group homes throughout the state to ensure that the facilities operate in compliance with national best practices and state and federal law. The monitoring unit shall only monitor group homes that serve as a dispositional placement for delinquent youth pursuant to Section 43-21-605. Nothing in this section shall be construed as giving the monitoring unit authority to monitor foster care or shelter care placements. All monitors shall be employees

of the Department of Public Safety. The inspections by the unit shall encompass the following:

(a) To review and evaluate (i) all procedures set by detention centers, training schools and group homes and (ii) all records containing information related to the operations of the detention centers, training schools and group homes;

(b) To review and investigate all complaints filed with the monitoring unit concerning children's treatment in detention centers, training schools and group homes;

(c) To conduct quarterly monitoring visits of all detention centers, training schools and group homes. The monitor shall have access to an entire facility and shall conduct confidential interviews with youth and facility staff;

(d) To advise a facility on how to meet the needs of children who require immediate attention;

(e) To provide technical assistance and advice to juvenile detention facilities, which will assist the facilities in complying with state and federal law.

To carry out the duties in this subsection (1) a monitor may consult with an administrator, employee, child, parent, expert or other individual in the course of monitoring or investigating. In addition, the monitor may review court documents and other confidential records as necessary to fulfill these duties.

(2) Additional duties of the monitoring unit are as follows:

(a) To make available on a quarterly basis to the Governor, Lieutenant Governor and each member of the Legislature and each member of a county board of supervisors, a report that describes:

(i) The work of the monitoring unit;

(ii) The results of any review or investigation undertaken by the monitoring unit;

(iii) Any allegations of abuse or injury of a child; and

(iv) Any problems concerning the administration of a detention center.

The reports described in this subsection shall keep the names of all children, parents and employees confidential.

(b) To promote awareness among the public and the children held in detention by providing the following:

(i) How the monitoring unit may be contacted;

(ii) The purpose of the monitoring unit; and

(iii) The services that the monitoring unit provides.

(3) The records of a monitor shall be confidential. Any child, staff member, parent or other interested individual may communicate to a monitor in person, by mail, by phone, or any other means. All communications shall be kept confidential and privileged, except that the youth court and the facility shall have access to such records, but the identity of reporters shall remain confidential.

SOURCES: Laws, 2005, ch. 471, § 1; Laws, 2009, ch. 398, § 2; Laws, 2010, ch. 543, § 1, eff from and after July 1, 2010.

Cross References — Juvenile Detention Facilities Monitoring Unit to monitor detention facilities for compliance with minimum standards operation prescribed in § 43-21-321(6), see § 43-21-321.

§ 43-21-324. Training for all Juvenile Facilities Monitoring Unit employees and juvenile detention center administrators.

The Department of Public Safety shall contract with a juvenile justice expert who has substantial experience in the administration of constitutionally compliant juvenile facilities and significant experience monitoring juvenile justice facilities for a local jurisdiction, state, or as a court-appointed monitor. The contractor shall provide training to all of the Juvenile Facilities Monitoring Unit employees within six (6) months of April 1, 2014. All employees of the Monitoring Unit must successfully complete the training as determined by the juvenile justice expert through the use of a pretest and posttest, facility tour, or any other criteria the expert selects. The training shall include interviewing skills, report writing, and information regarding standard practices in juvenile detention centers. In addition to the training for the Juvenile Facilities Monitoring Unit, the Department of Public Safety shall arrange for at least eight (8) hours of training for the administrators of the juvenile detention centers in the state by the juvenile justice expert. The Department of Public Safety shall ensure that its contract with the juvenile justice expert includes a provision for technical assistance to the staff of the Juvenile Facilities Monitoring Unit for at least six (6) months after the completion of the training.

SOURCES: Laws, 2014, ch. 471, § 2, eff from and after passage (approved Apr. 1, 2014.)

§ 43-21-325. Department of Public Safety authorized to carry out provisions of federal Juvenile Justice and Delinquency Prevention Act of 2002; penalties for certain individuals who interfere with department's performance of its duties.

(1) The Department of Public Safety's Planning Division is authorized to monitor and carry out the provisions of the federal Juvenile Justice and Delinquency Prevention Act of 2002 in the four (4) core protection requirements of the act for the state as follows:

(a) Deinstitutionalization of status offenders;
(b) Separation of juveniles from incarcerated adults;
(c) Removal of juveniles from adult jails and lockups; and
(d) Disproportional minority contact.

(2) If any staff or individual of a secure facility prohibits the Department of Public Safety's Planning Division from fully performing its duties, as

prescribed in the federal Juvenile Justice and Delinquency Prevention Act of 2002, then such staff or individual shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than One Thousand Dollars ($1,000.00).

SOURCES: Laws, 2009, ch. 398, § 1, eff from and after July 1, 2009.

Cross References — Department of Public Safety generally, see §§ 45-1-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects — Juvenile Justice and Delinquency Prevention Act of 2002, see 42 USCS §§ 5601 et seq.

INTAKE

Sec.

43-21-351. Reception of information.

43-21-353. Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations.

43-21-354. Statewide incoming wide area telephone service to be maintained on twenty-four-hour seven days a week basis.

43-21-355. Immunity for reporting information.

43-21-357. Intake procedure.

§ 43-21-351. Reception of information.

(1) Any person or agency having knowledge that a child residing or being within the county is within the jurisdiction of the youth court may make a written report to the intake unit alleging facts sufficient to establish the jurisdiction of the youth court. The report shall bear a permanent number that will be assigned by the court in accordance with the standards established by the Administrative Office of Courts pursuant to Section 9-21-9(d), and shall be preserved until destroyed on order of the court.

(2) There shall be in each youth court of the state an intake officer who shall be responsible for the accurate and timely entering of all intake and case information into the Mississippi Youth Court Information Delivery System (MYCIDS) for the Division of Youth Services, truancy matters and the Division of Family and Children's Services. It shall be the responsibility of the youth court judge or referee of each county to ensure that the intake officer is carrying out the responsibility of this section.

SOURCES: Laws, 1979, ch. 506, § 40; Laws, 1998, ch. 367, § 4; Laws, 2015, ch. 418, § 3, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment designated the former section as (1) and added (2).

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

§ 43-21-353. Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations.

(1) Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee or any other person having reasonable cause to suspect that a child is a neglected child or an abused child, shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing to the Department of Human Services, and immediately a referral shall be made by the Department of Human Services to the youth court intake unit, which unit shall promptly comply with Section 43-21-357. In the course of an investigation, at the initial time of contact with the individual(s) about whom a report has been made under this Youth Court Act or with the individual(s) responsible for the health or welfare of a child about whom a report has been made under this chapter, the Department of Human Services shall inform the individual of the specific complaints or allegations made against the individual. Consistent with subsection (4), the identity of the person who reported his or her suspicion shall not be disclosed. Where appropriate, the Department of Human Services shall additionally make a referral to the youth court prosecutor.

Upon receiving a report that a child has been sexually abused, or burned, tortured, mutilated or otherwise physically abused in such a manner as to cause serious bodily harm, or upon receiving any report of abuse that would be a felony under state or federal law, the Department of Human Services shall immediately notify the law enforcement agency in whose jurisdiction the abuse occurred and shall notify the appropriate prosecutor within forty-eight (48) hours, and the Department of Human Services shall have the duty to provide the law enforcement agency all the names and facts known at the time of the report; this duty shall be of a continuing nature. The law enforcement agency and the Department of Human Services shall investigate the reported abuse immediately and shall file a preliminary report with the appropriate prosecutor's office within twenty-four (24) hours and shall make additional reports as new or additional information or evidence becomes available. The Department of Human Services shall advise the clerk of the youth court and the youth court prosecutor of all cases of abuse reported to the department within seventy-two (72) hours and shall update such report as information becomes available.

(2) Any report to the Department of Human Services shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries and any other information that might be helpful in establishing the cause of the injury and the identity of the perpetrator.

(3) The Department of Human Services shall maintain a statewide incoming wide-area telephone service or similar service for the purpose of

receiving reports of suspected cases of child abuse; provided that any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer or public or private school employee who is required to report under subsection (1) of this section shall report in the manner required in subsection (1).

(4) Reports of abuse and neglect made under this chapter and the identity of the reporter are confidential except when the court in which the investigation report is filed, in its discretion, determines the testimony of the person reporting to be material to a judicial proceeding or when the identity of the reporter is released to law enforcement agencies and the appropriate prosecutor pursuant to subsection (1). Reports made under this section to any law enforcement agency or prosecutorial officer are for the purpose of criminal investigation and prosecution only and no information from these reports may be released to the public except as provided by Section 43-21-261. Disclosure of any information by the prosecutor shall be according to the Mississippi Uniform Rules of Circuit and County Court Procedure. The identity of the reporting party shall not be disclosed to anyone other than law enforcement officers or prosecutors without an order from the appropriate youth court. Any person disclosing any reports made under this section in a manner not expressly provided for in this section or Section 43-21-261, shall be guilty of a misdemeanor and subject to the penalties prescribed by Section 43-21-267.

(5) All final dispositions of law enforcement investigations described in subsection (1) of this section shall be determined only by the appropriate prosecutor or court. All final dispositions of investigations by the Department of Human Services as described in subsection (1) of this section shall be determined only by the youth court. Reports made under subsection (1) of this section by the Department of Human Services to the law enforcement agency and to the district attorney's office shall include the following, if known to the department:

(a) The name and address of the child;

(b) The names and addresses of the parents;

(c) The name and address of the suspected perpetrator;

(d) The names and addresses of all witnesses, including the reporting party if a material witness to the abuse;

(e) A brief statement of the facts indicating that the child has been abused and any other information from the agency files or known to the family protection worker or family protection specialist making the investigation, including medical records or other records, which may assist law enforcement or the district attorney in investigating and/or prosecuting the case; and

(f) What, if any, action is being taken by the Department of Human Services.

(6) In any investigation of a report made under this chapter of the abuse or neglect of a child as defined in Section 43-21-105(m), the Department of Human Services may request the appropriate law enforcement officer with

jurisdiction to accompany the department in its investigation, and in such cases the law enforcement officer shall comply with such request.

(7) Anyone who willfully violates any provision of this section shall be, upon being found guilty, punished by a fine not to exceed Five Thousand Dollars ($5,000.00), or by imprisonment in jail not to exceed one (1) year, or both.

(8) If a report is made directly to the Department of Human Services that a child has been abused or neglected in an out-of-home setting, a referral shall be made immediately to the law enforcement agency in whose jurisdiction the abuse occurred and the department shall notify the district attorney's office within forty-eight (48) hours of such report. The Department of Human Services shall investigate the out-of-home setting report of abuse or neglect to determine whether the child who is the subject of the report, or other children in the same environment, comes within the jurisdiction of the youth court and shall report to the youth court the department's findings and recommendation as to whether the child who is the subject of the report or other children in the same environment require the protection of the youth court. The law enforcement agency shall investigate the reported abuse immediately and shall file a preliminary report with the district attorney's office within forty-eight (48) hours and shall make additional reports as new information or evidence becomes available. If the out-of-home setting is a licensed facility, an additional referral shall be made by the Department of Human Services to the licensing agency. The licensing agency shall investigate the report and shall provide the Department of Human Services, the law enforcement agency and the district attorney's office with their written findings from such investigation as well as that licensing agency's recommendations and actions taken.

SOURCES: Laws, 1979, ch. 506, § 41; Laws, 1980, ch. 550, § 17; Laws, 1984, ch. 342; Laws, 1985, ch. 360; Laws, 1993, ch. 522, § 1; Laws, 1994, ch. 387, § 1; Laws, 1994, ch. 591, § 3; Laws, 1995, ch. 335, § 1; Laws, 1996, ch. 323, § 2; Laws, 1997, ch. 440, § 10; Laws, 1998, ch. 340, § 1; Laws, 1998, ch. 557, § 1; Laws, 2004, ch. 489, § 3; Laws, 2006, ch. 600, § 4; Laws, 2007, ch. 337, § 3, eff from and after July 1, 2007.

Joint Legislative Committee Note — Section 1 of ch. 340, Laws of 1998, effective July 1, 1998 (approved March 16, 1998), amended this section. Section 1 of ch. 557, Laws of 1998, effective July 1, 1998 (approved April 14, 1998), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 557, Law of , 1998, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Youth Court Law, see §§ 43-21-101 et seq.

Telephone service to be maintained on twenty-four-hour seven days a week basis, see § 43-21-354.

Immunity for reporting information, see § 43-21-355.

Testimony of physician making report regarding child's injuries or condition not to be excluded because of physician-patient privilege, see § 97-5-39.

Imposition of standard state assessment in addition to all court imposed fines for any misdemeanor violation, see § 99-19-73.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. In general.
2. Miranda rights.

1. In general.

Trial court erred in granting the Department of Human Services (DHS) summary judgment on a mother's wrongful death claim where there were conflicting affidavits as to whether a report of abuse had been made to the DHS, resolution depended on the credibility of the affiants, DHS had no discretion to determine whether the phone calls from a medical center were reports under Miss. Code Ann. § 43-21-353(1) (2009), and thus, a genuine issue of fact existed as to whether the DHS's ministerial duty to investigate was triggered. Watkins v. Miss. Dep't of Human Servs., 132 So. 3d 1037 (Miss. 2014).

Judgment was properly entered for a school district in a case alleging negligence per se and other causes of action because an unsubstantiated rumor of an inappropriate relationship between a teacher and a student, without more, was insufficient to trigger a reporting duty under Miss. Code Ann. § 97-5-24; Miss. Code Ann. § 43-21-353 did not apply since the teacher was not a person responsible for the student's care or support, and there was no evidence that the type of conduct applicable to § 43-21-353 had occurred. Brown v. Pontotoc County Sch. Dist. (In re Doe), 957 So. 2d 410 (Miss. Ct. App. 2007).

Defendant's conviction for being an accessory after the fact to her husband's crime of statutory rape by assisting her daughter in obtaining an abortion was appropriate because defendant's proposed jury instruction was legally in error; defendant, the victim's mother, was told by her daughter of the sexual abuse while defendant worked at a school, and thus she had a reporting requirement under Miss. Code Ann. § 43-21-353(1). Sherron v. State, 959 So. 2d 30 (Miss. Ct. App. 2006), writ of certiorari denied by 958 So. 2d 1232, 2007 Miss. LEXIS 375 (Miss. 2007).

Miss. Code Ann. §§ 43-21-353, 43-21-357 did not give plaintiff children a constitutionally protected liberty interest in having all reports of abuse or neglect reported to the youth court for judicial review of the children's situation and a court order requiring the Division of Family and Children Services to take necessary steps to protect them from further abuse and neglect because the statutes did not guarantee a specific substantive outcome. Olivia Y. v. Barbour, 351 F. Supp. 2d 543 (S.D. Miss. 2004).

Where two parents were unable to produce evidence to rebut the presumption that a principal acted in good faith by reporting suspected child abuse, a trial court properly granted a motion to dismiss for failure to state a claim since the principal had immunity in an action alleging defamation, slander, libel, intentional infliction of emotional distress, and false light. Howe v. Andereck, 882 So. 2d 240 (Miss. Ct. App. 2004), writ of certiorari denied by 882 So. 2d 772, 2004 Miss. LEXIS 1179 (Miss. 2004).

For purposes of governmental immunity, the statutory framework for reporting cases of suspected child abuse includes elements of both ministerial and discretionary conduct; § 43-21-353 first requires a person to make a determination of whether "reasonable cause" exists as a foundation for an incident report, which involves a duty to investigate a ministerial duty and a decision as to whether reasonable cause exists a decision involving the exercise of personal judgment and discretion; if a determination is made that there is reasonable cause to report the incident, the statute then mandates that an immediate oral report be issued to the Department of Human Services an action involving no discretion. T.M. v. Noblitt, 650 So. 2d 1340 (Miss. 1995).

Section 43-21-353 does not create a child abuse exception to the psychologist-patient privilege set forth in § 73-31-29. Section 43-21-353 pertains to situations where a child is presented to a physician for treatment. It does not pertain to a situation where the offender seeks treatment from a physician; if such were the case, persons with abnormal behaviors would be forestalled from seeking treatment. Everett v. State, 572 So. 2d 838 (Miss. 1990).

2. Miranda rights.

Licensed social worker employed by state was not required to inform defendant of his Miranda rights before interview to investigate allegations of sexual battery; social worker was not law enforcement official, lacked authority to arrest defendant, and had duty to report any suspected abuse. Hennington v. State, 702 So. 2d 403 (Miss. 1997).

ATTORNEY GENERAL OPINIONS

Employees of the Mississippi Department of Human Services are not prohibited from serving as the intake unit for abuse and neglect cases, but they must be appointed by the youth court judge and, as salaried public employees, must not receive additional compensation from the municipality or county. Greenlee, January 21, 1998, A.G. Op. #97-0806.

The update to the youth court prosecutor referred to in subsection (1) would consist of any information which becomes available to the department which would be pertinent to the youth court prosecutor's decision of whether or not to file a petition in the youth court. Taylor, June 19, 1998, A.G. Op. #98-0318.

The responsibility of the Department of Human Services under subsection (8) requires only a determination of whether the reported abuse or neglect was done by a parent, guardian, or custodian or any person responsible for a child's care or support; once this question has been answered in the negative, any investigation of the abuse or neglect is solely the responsibility of law enforcement agencies. Taylor, June 19, 1998, A.G. Op. #98-0318.

RESEARCH REFERENCES

ALR. Civil liability of physician for failure to diagnose or report battered child syndrome. 97 A.L.R.3d 338.

Validity, construction, and application of state statute requiring doctor or other person to report child abuse. 73 A.L.R.4th 782.

Failure of state or local government entity to protect child abuse victim as violation of federal constitutional right. 79 A.L.R. Fed. 514.

Physical examination of child's body for evidence of abuse as violative of Fourth Amendment or as raising Fourth Amendment issue. 93 A.L.R. Fed. 530.

Am Jur. 38 Am. Jur. Trials 1, Professional Liability for Failure to Report Child Abuse.

2 Am. Jur. Proof of Facts 2d, Child Abuse; The Battered Child Syndrome, §§ 35 et seq. (proof of physical abuse in juvenile or family court proceeding).

6 Am. Jur. Proof of Facts 2d, Failure to Report Suspected Case of Child Abuse, §§ 10 et seq. (proof of physician's negligent failure to diagnose and report suspected case of child abuse).

Law Reviews. Chaffee, Ripps, and Ritchie, To disclose or not to disclose: the dilemma of the school counselor. 13 Miss. C. L. Rev. 323 (Spring, 1993).

Best Practices in the Response to Child Abuse, 25 Miss. C. L. Rev. 73, Fall, 2005.

Practice References. Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions (Michie).

§ 43-21-354. Statewide incoming wide area telephone service to be maintained on twenty-four-hour seven days a week basis.

The statewide incoming wide area telephone service established pursuant to Section 43-21-353, Mississippi Code of 1972, shall be maintained by the Department of Public Welfare, or its successor, on a twenty-four-hour seven (7) days a week basis.

SOURCES: Laws, 1989, ch. 566, § 2, eff from and after passage (approved April 21, 1989).

Cross References — Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

§ 43-21-355. Immunity for reporting information.

Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, school attendance officer, public school district employee, nonpublic school employee, licensed professional counselor or any other person participating in the making of a required report pursuant to Section 43-21-353 or participating in the judicial proceeding resulting therefrom shall be presumed to be acting in good faith. Any person or institution reporting in good faith shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

SOURCES: Laws, 1979, ch. 506, § 42; Laws, 1980, ch. 550, § 18; Laws, 1982, Ex Sess, ch. 17, § 22; Laws, 1993, ch. 522, § 2; Laws, 1994, ch. 591, § 4; Laws, 2004, ch. 489, § 4; Laws, 2006, ch. 430, § 1; Laws, 2006, ch. 600, § 5, eff from and after July 1, 2006.

Joint Legislative Committee Note — Section 1 of ch. 430, Laws of 2006, effective from and after July 1, 2006 (approved March 20, 2006), amended this section. Section 5 of ch. 600, Laws of 2006, effective from and after July 1, 2006 (approved April 24, 2006), also amended this section. As set out above, this section reflects the language of Section 5 of ch. 600, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. Failure to rebut presumption.

Where two parents were unable to produce evidence to rebut the presumption that a principal acted in good faith by reporting suspected child abuse, a trial court properly granted a motion to dismiss for failure to state a claim since the principal had immunity in an action alleging defamation, slander, libel, intentional infliction of emotional distress, and false light. Howe v. Andereck, 882 So. 2d 240 (Miss. Ct. App. 2004), writ of certiorari denied by 882 So. 2d 772, 2004 Miss. LEXIS 1179 (Miss. 2004).

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. Trials 1, Professional Liability for Failure to Report Child Abuse.

§ 43-21-357. Intake procedure.

(1) After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the same environment or the public requires the youth court to take further action. As part of the preliminary inquiry, the youth court intake unit may request or the youth court may order the Department of Human Services, the Department of Youth Services, any successor agency or any other qualified public employee to make an investigation or report concerning the child and any other children in the same environment, and present the findings thereof to the youth court intake unit. If the youth court intake unit receives a neglect or abuse report, the youth court intake unit shall immediately forward the complaint to the Department of Human Services to promptly make an investigation or report concerning the child and any other children in the same environment and promptly present the findings thereof to the youth court intake unit. If it appears from the preliminary inquiry that the child or other children in the same environment are within the jurisdiction of the court, the youth court intake unit shall recommend to the youth court:

(a) That the youth court take no action;

(b) That an informal adjustment be made;

(c) The Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;

(d) That the child is warned or counseled informally;

(e) That the child be referred to the youth court drug court; or

(f) That a petition be filed.

(2) The youth court shall then, without a hearing:

(a) Order that no action be taken;

(b) Order that an informal adjustment be made;

(c) Order that the Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;

(d) Order that the child is warned or counseled informally;

(e) That the child be referred to the youth court drug court; or

(f) Order that a petition be filed.

(3) If the preliminary inquiry discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

SOURCES: Laws, 1979, ch. 506, § 43; Laws, 1986, ch. 416, § 2; Laws, 1997, ch. 440, § 11; Laws, 1998, ch. 367, § 5; Laws, 2012, ch. 410, § 1, eff from and after passage (approved Apr. 18, 2012.)

Editor's Note — Section 43-27-2 provides that the term "Department of Youth Services" shall mean the "Department of Human Services".

Laws of 2012, ch. 410, § 4, provides:

"SECTION 4. Sections 1 and 2 of this act shall take effect and be in force from and after its passage (approved April 18, 2012), and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Cross References — Reinstatement of intake procedure upon termination of informal adjustment process, see § 43-21-407.

Contributing to the neglect or delinquency of a child, felonious abuse or battery of child, see § 97-5-39.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. §§ 43-21-353, 43-21-357 did not give plaintiff children a constitutionally protected liberty interest in having all reports of abuse or neglect reported to the youth court for judicial review of the children's situation and a court order requiring the Division of Family and Children Services to take necessary steps to protect them from further abuse and neglect because the statutes did not guarantee a specific substantive outcome. Olivia Y. v. Barbour, 351 F. Supp. 2d 543 (S.D. Miss. 2004).

ATTORNEY GENERAL OPINIONS

Under Section 43-21-357, in the investigation of suspected abuse or neglect by the Department of Human Services, the Department does not have to go through or obtain permission from the parent(s) or an attorney selected by the parent(s) before speaking to either the alleged victims or witnesses to the alleged incident(s) of abuse or neglect. Harper, February 9, 1996, A.G. Op. #96-0072.

The chancery clerk does not earn a fee where the Youth Court, without a hearing: (a) orders that no action be taken; (b) orders that an informal adjustment be made; (c) orders that the Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in this same environment; or (d) orders that the child is warned or counseled informally. Sumners, August 27, 1999, A.G. Op. #99-0342.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Proof of Facts 2d, Child Abuse; The Battered Child Syndrome, §§ 35 et seq. (proof of physical abuse in juvenile or family court proceeding).

INFORMAL PROCEEDINGS

SEC.
43-21-401. Informal adjustment.
43-21-403. Notice to parties.

43-21-405. Informal adjustment process.
43-21-407. Termination of informal adjustment.

§ 43-21-401. Informal adjustment.

(1) Informal adjustment pursuant to the informal adjustment agreement provided in Section 43-21-405 shall include:

(a) the giving of counsel and advice to the child and his parent, guardian or custodian;

(b) referrals to public and private agencies which may provide benefits, guidance or services to the child and his parent, guardian or custodian;

(c) temporary placement of the child or supervision by the youth court counselor with the consent of the child and his parent, guardian or custodian, subject to youth court review.

(2) If authorized by the youth court, informal adjustment may be commenced after the filing of a petition.

(3) If the child and his parent, guardian or custodian agree to participate in an informal adjustment process, the defense of a failure to provide a speedy trial is waived and a petition may be filed if the informal adjustment process is unsuccessfully terminated under Section 43-21-407.

SOURCES: Laws, 1979, ch. 506, § 44, eff from and after July 1, 1979.

Cross References — Formal proceedings, see § 43-21-451 through 43-21-459.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Inapplicability of Mississippi Rules of Evidence in youth court cases, see Miss. R. Evid. 1101.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

RESEARCH REFERENCES

ALR. When may dismissal for violation of Speedy Trial Act (18 USCS §§ 3161-3174) be with prejudice to government's right to reinstate action. 98 A.L.R. Fed. 660.

Practice References. Representing the Child Client (Matthew Bender).

Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions (Michie).

§ 43-21-403. Notice to parties.

When it is determined to make an informal adjustment, the child and his parent, guardian or custodian shall be requested by letter, telephone or otherwise to attend a conference at a designated date, time and place. At the time the request to attend the conference is made, the child and his parent, guardian or custodian shall be informed that attendance at the conference is voluntary and that they may be represented by counsel or other person of their choice at the conference.

SOURCES: Laws, 1979, ch. 506, § 45, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

RESEARCH REFERENCES

ALR. Failure to give adequate notice to juvenile's parents as ground for reversal of determination of juvenile delinquency under Federal Juvenile Delinquency Act (18 USCS §§ 5031-5042). 30 A.L.R. Fed. 745.

§ 43-21-405. Informal adjustment process.

(1) The informal adjustment process shall be initiated with an informal adjustment conference conducted by an informal adjustment counselor appointed by the judge or his designee.

(2) If the child and his parent, guardian or custodian appear at the informal adjustment conference without counsel, the informal adjustment counselor shall, at the commencement of the conference, inform them of their right to counsel, the child's right to appointment of counsel and the right of the child to remain silent. If either the child or his parent, guardian or custodian indicates a desire to be represented by counsel, the informal adjustment counselor shall adjourn the conference to afford an opportunity to secure counsel.

(3) At the beginning of the informal adjustment conference, the informal adjustment counselor shall inform the child and his parent, guardian or custodian:

(a) That information has been received concerning the child which appears to establish jurisdiction of the youth court;

(b) The purpose of the informal adjustment conference;

(c) That during the informal adjustment process no petition will be filed;

(d) That the informal adjustment process is voluntary with the child and his parent, guardian or custodian and that they may withdraw from the informal adjustment at any time; and

(e) The circumstances under which the informal adjustment process can be terminated under Section 43-21-407.

(4) The informal adjustment counselor shall then discuss with the child and his parent, guardian or custodian:

(a) Recommendations for actions or conduct in the interest of the child to correct the conditions of behavior or environment which may exist;

(b) Continuing conferences and contacts with the child and his parent, guardian or custodian by the informal adjustment counselor or other authorized persons; and

(c) The child's general behavior, his home and school environment and other factors bearing upon the proposed informal adjustment.

(5) After the parties have agreed upon the appropriate terms and conditions of informal adjustment, the informal adjustment counselor and the child and his parent, guardian or custodian shall sign a written informal adjustment agreement setting forth the terms and conditions of the informal adjustment. The informal adjustment agreement may be modified at any time upon the consent of all parties to the informal adjustment conference.

(6) The informal adjustment process shall not continue beyond a period of six (6) months from its commencement unless extended by the youth court for an additional period not to exceed six (6) months by court authorization prior to the expiration of the original six-month period. In no event shall the custody or supervision of a child which has been placed with the Department of Public Welfare be continued or extended except upon a written finding by the youth court judge or referee that reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody, and that reasonable efforts will continue to be made towards reunification of the family.

SOURCES: Laws, 1979, ch. 506, § 46; Laws, 1985, ch. 486, § 6, eff from and after passage (approved April 10, 1985).

Editor's Note — Section 43-1-1 provides that the term "State Department of Public Welfare" shall mean the Department of Human Services, and that the term "State Board of Public Welfare" shall mean the State Board of Human Services.

Cross References — Termination of informal adjustment conference, see § 43-21-407.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Lawyers' Edition. Supreme Court's views as to what comments by prosecuting attorney violate accused's privilege against self-incrimination under Federal Constitution's Fifth Amendment. 99 L. Ed. 2d 926.

§ 43-21-407. Termination of informal adjustment.

(1) If it appears to the informal adjustment counselor that the child and his parent, guardian or custodian:

(a) have complied with the terms and conditions of the informal adjustment agreement; and

(b) have received the maximum benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process and dismiss the child without further proceedings. The informal adjustment counselor shall notify the child and his parent, guardian or custodian in writing of the satisfactory completion of the informal adjustment and report such action to the youth court.

(2) If it appears to the informal adjustment counselor that further efforts at informal adjustment would not be in the best interests of the child or the community, or that the child or his parent, guardian or custodian:

(a) denies the jurisdiction of the youth court;

(b) declines to participate in the informal adjustment process;

(c) expresses a desire that the facts be determined by the youth court;

(d) fails without reasonable excuse to attend scheduled meetings;

(e) appears unable or unwilling to benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process. If the informal adjustment process is so terminated, the intake unit shall reinitiate the intake procedure under Section 43-21-357. Even if the informal adjustment process has been so terminated, the intake unit shall not be precluded from reinitiating the informal adjustment process.

SOURCES: Laws, 1979, ch. 506, § 47, eff from and after July 1, 1979.

Cross References — Waiver of defense of failure to provide speedy trial and filing of petition upon unsuccessful termination of informal adjustment process, see § 43-21-401(3).

Informing the parties at the commencement of the conference of the circumstances under which informal adjustment process can be terminated, see § 43-21-405(3)(e).

Requirement that informal adjustment counselor inform parties of circumstances under which process can be terminated, see § 43-21-405.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

PETITION

SEC.	
43-21-451.	Commencement of formal proceedings.
43-21-453.	Style of petition.
43-21-455.	Content of petition.
43-21-457.	Amendment to the petition.
43-21-459.	Responsive pleadings.

§ 43-21-451. Commencement of formal proceedings.

All proceedings seeking an adjudication that a child is a delinquent child, a child in need of supervision, a neglected child or an abused child shall be initiated by the filing of a petition. Upon authorization of the youth court, the petition shall be drafted and filed by the youth court prosecutor unless the youth court has designated some other person to draft and file the petition. The petition shall be filed within five (5) days from the date of a detention hearing or shelter hearing continuing custody. Unless another period of time is authorized by the youth court or its designee, in noncustody cases the petition shall be filed within ten (10) days of the court order authorizing the filing of a petition. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

SOURCES: Laws, 1979, ch. 506, § 48; Laws, 1980, ch. 550, § 19; Laws, 1997, ch. 440, § 12, eff from and after July 1, 1997.

Cross References — Applicability of this section against a parent, guardian or custodian of a compulsory-school-age child for failure to comply with the Mississippi Compulsory School Attendance Law, see § 37-13-91.

Informal proceedings, see §§ 43-21-401 through 43-21-407.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Proceedings violated the Youth Court Law, and consequently, the right of a juvenile and his parents to due process, because the petition against the juvenile was filed forty-eight days after his detention hearing. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

While the 90-day requirement set forth in § 43-21-551 is stated in the mandatory "shall," dismissal by the youth court for failure to file within the required period after authorization to file the petition is discretionary under § 43-21-451. A youth court did not abuse its discretion in not dismissing a petition, seeking to have a child adjudged an abused child, for failure to comply with § 43-21-451's 10-day time limit where the reasons given by the youth court for not dismissing the petition were that it would not be in the best interest of the child and the tremendous case load of the youth court, and the child's father failed to demonstrate any prejudice that resulted from the 26-day delay and failed to make any inquiry concerning the case until approximately 2 months after the date of the shelter hearing. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

The youth court judge's verbal authorization to the county attorney, for the filing of a petition alleging delinquency, was sufficient. In re Evans, 350 So. 2d 52 (Miss. 1977).

Delinquents under eighteen years of age, by virtue of Code 1942 § 7199, may be brought before the juvenile court when arrested on any charge "with or without warrant," and when this is done the court has full jurisdiction to make proper disposition of the delinquent, although a proceeding may also be instituted upon petition by some reputable person as provided in this section. Williams v. Bush, 199 Miss. 382, 24 So. 2d 863 (1946).

ATTORNEY GENERAL OPINIONS

Youth Court Prosecutor is not required to swear to Petition. McLemore, August 5, 1993, A.G. Op. #93-0387.

Alternative school programs are integral part of school district; programs are operated in connection with regular programs of district and are subject to accreditation standards established by State Department of Education; therefore, assignment to alternative program is not expulsion or suspension from school district and would not require full due process hearing; informal conference with student during which he or she is allowed to explain his or her side is sufficient process in such cases. Lowery Sept. 23, 1993, A.G. Op. #93-0681.

RESEARCH REFERENCES

ALR. Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student. 47 A.L.R.5th 1.

Am Jur. 15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 22-25 (petition or application — for judicial determination of minor's status as delinquent, dependent or neglected — request for appropriate court action); Form 35 (affidavit — unfitness of parent as custodian of child); Form 36 (order — directing investigation of alleged delinquency, dependency, or neglect of minor).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

6 Am. Jur. Proof of Facts 2d, Failure to Report Suspected Case of Child Abuse, §§ 10 et seq. (proof of physician's negligent failure to diagnose and report suspected case of child abuse).

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions (Michie).

§ 43-21-453. Style of petition.

The petition shall be entitled "IN THE INTEREST OF ________."

SOURCES: Laws, 1979, ch. 506, § 49, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 22-25 (petition or application — for judicial determination of minor's status as delinquent, dependent or neglected — request for appropriate court action).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-455. Content of petition.

(1) The petition shall set forth plainly and concisely with particularity:

(a) identification of the child, including his full name, birth date, age, sex and residence;

(b) identification of the parent, guardian or custodian including the name and residence of the child's parents, the name and residence of the child's legal guardian, if there be one, any person or agency in whose custody the child may be and the child's nearest relative if no parent or guardian be known;

(c) a statement of the facts, including the facts which bring the child within the jurisdiction of the youth court and which show the child is a delinquent child, a child in need of supervision, a neglected child or an abused child;

(d) in petitions alleging delinquency, a citation of the statute or ordinance which the child is alleged to have violated. Error in or omission of the citation shall not be grounds for dismissing the petition or for a reversal of the adjudication based thereon if the error or omission did not mislead the child to his prejudice.

(e) a prayer for the type of adjudicatory relief sought; and

(f) if any of the facts herein required are not known by the petitioner.

(2) Two (2) or more offenses may, in the discretion of the youth court, be alleged in the same petition in a separate count for each offense.

(3) Two (2) or more children may be the subject of the same petition if:

(a) they are siblings; and

(b) they are alleged to be neglected or abused from a common source of mistreatment or neglect.

(4) Where the child is alleged to be a delinquent child, the petition must recite factual allegations with the same particularity required in a criminal indictment but need not have the technical form of a criminal indictment.

(5) The petition may contain a motion to transfer.

SOURCES: Laws, 1979, ch. 506, § 50; Laws, 1980, ch. 550, § 20, eff from and after July 1, 1980.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Prac. Rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Proceedings violated the Youth Court Law, and consequently, the right of a juvenile and his parents to due process, because not a single fact was alleged to support the charge against the juvenile; the complete failure to provide adequate notice of the charges violated the Due Process Clauses of the United States and Mississippi Constitutions. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

The fact that a youth court petition failed to state the statute or ordinance which the juvenile was alleged to have violated was not fatal where the juvenile and his attorney were well aware of the nature of the charges; however, Youth Court prosecutors and Youth Courts should take seriously the statutory directive of § 43-21-455(1)(d), which governs Youth Court proceedings, and include in their petitions "a citation of the statute or ordinance which the child is alleged to have violated." In re R.T., 520 So. 2d 136 (Miss. 1988).

2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

The petition could not support a finding that appellant was a delinquent under the Youth Court Law where, in attempting to charge offenses of grand larceny and burglary, it omitted any allegations as to ownership of the articles allegedly stolen and any description of the property allegedly burglarized, or even the ownership or right of ownership of that property. In re Earles, 294 So. 2d 171 (Miss. 1974).

A petition which institutes a youth court proceeding must recite factual allegations specific and definite enough to fairly apprise juvenile, his parents, custodians or guardians of particular act or acts of misconduct or the particular circumstances which will be inquired into at adjudicatory proceedings, and in those cases where a charge of delinquency is based upon violation of a criminal law, petition must charge offense with the same particularity required in a criminal indictment. In re Dennis, 291 So. 2d 731 (Miss. 1974).

The youth court is a court of statutory and limited jurisdiction, and the facts vesting jurisdiction should be shown affirmatively. Griffin v. Bell, 215 So. 2d 573 (Miss. 1968).

A petition alleging merely that a child is neglected, without setting forth the facts supporting the assertion, is insufficient. In re Slay, 245 Miss. 294, 147 So. 2d 299 (1962).

An allegation in general terms of delinquency does not bring a child within the operation of this act; hence it is not sufficient to allege that the child "is fast becoming uncontrollable" by its parents and "is violating the laws of the state in various ways." Sharp v. State, 240 Miss. 629, 127 So. 2d 865, 90 A.L.R.2d 284 (1961), error overruled, 240 Miss. 646, 129 So. 2d 637 (1961).

Where petition to commit minor to training school did not set forth names of parents or guardian or state they were unknown, as required, commitment was unlawful. Yarborough v. Coulter, 162 Miss. 50, 138 So. 591 (1932).

A petition for commitment of child must show existence of conditions specified in the statute. Holden v. Smith, 135 Miss. 322, 100 So. 27 (1924).

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 22-25 (petition or application — for judicial determination of minor's status as delinquent, dependent or neglected — request for appropriate court action).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-457. Amendment to the petition.

A petition may be amended at any time on order of the youth court for good cause shown so long as there is no prejudice to the parties.

SOURCES: Laws, 1979, ch. 506, § 51, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Proc. Rules 1 through 37.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 22-25 (petition or application — for judicial determination of minor's status as delinquent, dependent or neglected — request for appropriate court action).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-459. Responsive pleadings.

No party shall be required to file a responsive pleading.

SOURCES: Laws, 1979, ch. 506, § 52, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Proc. Rules 1 through 37.

SUMMONS

SEC.
43-21-501. Persons on whom served.
43-21-503. Form of summons.
43-21-505. Method of service.
43-21-507. Time of service.
43-21-509. Warrant for failure to obey summons.

§ 43-21-501. Persons on whom served.

(1) When a petition has been filed and the date of hearing has been set by the youth court, the judge or his designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing:

(a) the child named in the petition;

(b) the person or persons who have custody or control of the child;

(c) the parent or guardian of the child if such parent or guardian does not have custody of the child; and

(d) any other person whom the court deems necessary.

SOURCES: Laws, 1979, ch. 506, § 53, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Uniform Rules of Youth Court Practice, see Unif. R. Youth Ct. Proc. Rules 1 through 37.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former Law.

6. In general.
7. Necessity of notice.
8. Effect of voluntary appearance; waiver.
9. Sufficiency of notice.

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

The decree of the youth court was reversed and the cause remanded where no order had been entered fixing a date and place for the hearing, process was not issued and served upon the minor and his custodial relatives, the hearing without process was had within two days after the petition was filed, and the indigent minor was denied appointed counsel. In re Edwards, 298 So. 2d 703 (Miss. 1974).

The Youth Court Act contemplates a hearing with the parents present during the entire proceedings, and where the child's parent had been excluded from the hearing the court's order committing the child to a training school was rendered without due process of law and invalid. Hopkins v. Youth Court, 227 So. 2d 282 (Miss. 1969).

7. Necessity of notice.

A minor cannot waive process required by this section [Code 1972, § 43-21-13], and the youth court has no jurisdiction of the person until process has been served upon the minor and his parents, or persons standing in loco parentis; notice to the parents may be waived by them, but not process on the minor. In re Edwards, 298 So. 2d 703 (Miss. 1974).

The youth court is without jurisdiction unless the parents or guardian, if available, be summoned as required by this section [Code 1942, § 7185-06]. Hopkins v. Youth Court, 227 So. 2d 282 (Miss. 1969).

It is invalid to conduct a hearing without summoning the parent or parents of the minor, and it is invalid to conduct a hearing when the parent, when present, is excluded from the courtroom. Hopkins v. Youth Court, 227 So. 2d 282 (Miss. 1969).

Although the minor was a neglected child, since the only person who appeared on his behalf at the hearing in the youth court was the minor's aunt, and the proof disclosed that the father of the minor resided within the state, and no attempt was made to get process upon him, the youth court was without authority to send the minor to the state hospital for examination, observation and treatment. Walker v. State, 238 Miss. 532, 119 So. 2d 277 (1960).

The court is without jurisdiction to make a committal order where it is not shown that the parents were given personal notice of the hearing or that the appearance of the minor with the parents in court was voluntary. Monk v. State, 238 Miss. 658, 116 So. 2d 810 (1960).

A decree of committal of a minor to a state industrial school was void, and the minor was entitled to discharge in habeas corpus proceedings, where it appeared that, while process was issued for and was served on his father, and also on his grandfather and grandmother, the minor being in the custody of the grandparents at the time, service of process was not made upon him, and it was not shown that he was present at the committal hearing, no judgment, order or decree being valid or binding upon a party who has no notice of the proceedings against him. Maddox v. Bush, 191 Miss. 748, 4 So. 2d 302 (1941).

8. Effect of voluntary appearance; waiver.

Jurisdiction cannot be conferred by the voluntary appearance of the minor, without service of process. Sharp v. State, 240 Miss. 629, 127 So. 2d 865, 90 A.L.R.2d 284 (1961), error overruled, 240 Miss. 646, 129 So. 2d 637 (1961).

The invalidity of the provision of Code 1942 § 7185-06 that a minor may waive issuance and service of process by voluntary appearance does not affect the rest of the statute. Sharp v. State, 240 Miss. 629, 127 So. 2d 865, 90 A.L.R.2d 284 (1961), error overruled, 240 Miss. 646, 129 So. 2d 637 (1961).

The notice to parents required by the statute may be waived by their voluntary appearance. Sharp v. State, 240 Miss. 629, 127 So. 2d 865, 90 A.L.R.2d 284 (1961), error overruled, 240 Miss. 646, 129 So. 2d 637 (1961).

9. Sufficiency of notice.

Where the presence of a previously declared delinquent minor and his mother was the third time that they had appeared before the court in connection with a petition to revoke the minor's probation, and his court appointed counsel had been appointed 15 days before the hearing, and the record left no doubt that such counsel gave the minor vigorous, conscientious and capable representation throughout, under the circumstances there was no denial of due process because of inadequate notice of the hearing. McLeod v. Boone, 232 So. 2d 733 (Miss. 1970).

RESEARCH REFERENCES

ALR. Necessity of service of process upon infant itself in juvenile delinquency and dependency proceedings. 90 A.L.R.2d 293.

Am Jur. 15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 37 (order — for hearing, investigation, and summons — delinquency or dependency of minor child).

§ 43-21-503. Form of summons.

The form of the summons shall be substantially as follows:

State of Mississippi
County of ________ In the ________ Court of ________ County
Youth Court Division
No. ________
In the Interest of ________.

SUMMONS

TO: ________

You are required to serve the following:

TO: ________

You ________ are commanded to appear personally before the ________ Court of ________ County at the Courthouse in ________, Mississippi, at ________ o'clock on ________, the ________ day of ________, 2________, for a ________ hearing for the purpose set forth in the petition. ________ is required to produce ________ at the above-named hearing. You have a right to be represented by an attorney. You are requested to immediately notify the youth court of the name of your attorney. If indigent, the above-named child has a right to have an attorney appointed for him ____ free of charge, and should immediately apply to the youth court for such appointed counsel. You have a right to subpoena witnesses in your behalf.

GIVEN under hand and seal of court, at ________, Mississippi, this the ________ day of ________, 2____.

________, Clerk
________, D.C.

SOURCES: Laws, 1979, ch. 506, § 54, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Summons, see Unif. R. Youth Ct. Prac. R. 22.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

To justify trial of the question of delinquency, the summons must disclose such intention. In re Slay, 245 Miss. 294, 147 So. 2d 299 (1962).

§ 43-21-505. Method of service.

(1) Unless otherwise provided in this chapter, service of summons shall be made personally by delivery of a copy of the summons with a copy of the petition in a sealed envelope attached to the summons. A child may be served in the same manner as an adult.

(2) Service of the summons and petition, motions, notices and all other papers upon a child who has not reached his fourteenth birthday shall be effectuated by making service upon his parent, guardian or custodian and guardian ad litem, if any.

(3) If any parent or guardian does not reside within the state or cannot be located therein, the clerk shall issue summons to the guardian ad litem. If the name and post office address of the parent or guardian who does not reside within the state or cannot be located therein can be ascertained, the clerk shall mail by "certified mail" ten (10) days before the date set for the hearing a copy of the summons with a copy of the petition attached to the summons to such parent or guardian. The clerk shall note the fact of such mailing upon the court docket. Ten (10) days after the summons has been mailed, the youth court may take jurisdiction as if summons had been personally served as herein provided.

(4) The service of summons as required by this chapter shall be made by any person appointed by the youth court judge. Such person, for this purpose, shall be an officer of the youth court.

(5) Unless otherwise provided in this chapter, notice of the time, date, place and purpose of any hearing other than adjudicatory and transfer hearings shall be given to all parties in person in court or by mail, or in any other manner as the youth court may direct.

SOURCES: Laws, 1979, ch. 506, § 55, eff from and after July 1, 1979.

Cross References — Notice of review of dispositional order, see § 43-21-613.
Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.
Manner of service, see Unif. R. Youth Ct. Prac. R. 22.

JUDICIAL DECISIONS

The statute requires only that parents be notified of the "purpose" of a hearing and does not require that they be notified of every possible consequence of the hearing. G.R. v. Department of Human Servs., 725 So. 2d 241 (Miss. 1998).

ATTORNEY GENERAL OPINIONS

Process in adjudicatory and transfer hearings can be obtained by serving the guardian ad litem where the parents can not be located in state or out of state. Lee, Oct. 12, 2001, A.G. Op. #01-0623.

§ 43-21-507. Time of service.

(1) Summons shall be served not less than three (3) days before the date set for the adjudicatory hearing of proceedings concerning the child.

(2) A party other than the child may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing and in the case of written stipulation or voluntary appearance, the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if all other parties are properly before the youth court. At the time of the waiver, a copy of the petition shall be given to the party.

(3) If a child is served with process, the child may waive the three (3) days' time before the hearing, and the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if all other parties are properly before the youth court and the youth court finds all of the following:

(a) the child fully understands his rights and fully understands the potential consequences of the hearing;

(b) the child voluntarily, intelligently, and knowingly waives his rights to three (3) days' time before the hearing;

(c) the child is effectively represented by counsel; and

(d) the child has had in fact sufficient time to prepare.

SOURCES: Laws, 1979, ch. 506, § 56, eff from and after July 1, 1979.

Cross References — Ascertainment of compliance with notice requirements at beginning of each adjudicatory hearing, see § 43-21-557.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Time of service, see Unif. R. Youth Ct. Proc. Rule 22.

Waiver of summons, see Unif. R. Youth Ct. Prac. Rule 22.

Waiver of 3 days' time before hearing by child served with process, see Unif. R. Youth Ct. Prac. Rule 22.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Because a juvenile's father was served with his summons for hearing only two days before the hearing occurred, his service did not comply with the rules of service established by the Youth Court Law; however, the father appeared at the hearing, and any infirmity in the service was cured by the father's appearance. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

The statutory requirements for an adjudicatory hearing under the Youth Court Act (§§ 43-21-101 et seq.) were met where the proceedings were recorded by a court reporter pursuant to § 43-21-203(7), the parties received notice of the hearing more than 3 days before it was scheduled to begin under § 43-21-507, and the hearing was held within 90 days of the filing of the petition under § 43-21-551; the fact that the proceeding was postponed for approximately three months was without consequence since § 43-21-551 provides that a hearing may be continued upon a showing of good cause, and therefore the hearing was held within the time provided by the Youth Court Act. In re C.R., 604 So. 2d 1079 (Miss. 1992).

2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

Summons served on June 29, 1965, commanding the appearance of parties at a hearing to be held on July 2, 1965, did not meet the requirements of this section [Code 1942, § 7185-06]. In re Long, 184 So. 2d 861 (Miss. 1966).

The requirement of service not less than three days before the hearing may not be waived by the minor. In re Slay, 245 Miss. 294, 147 So. 2d 299 (1962).

§ 43-21-509. Warrant for failure to obey summons.

If any person summoned as herein provided shall without reasonable cause (the judge to determine what is reasonable cause) fails to appear, he may be proceeded against for contempt of court. In case the summons cannot be served or the parties served with summons fail to obey the same, or in any case when it shall be made to appear to the youth court that the service of summons will be ineffectual or the welfare of a child requires that he shall be brought forthwith into the custody of the youth court, a warrant or custody order may be issued against the parent, parents, guardian or custodian or against the child.

SOURCES: Laws, 1979, ch. 506, § 57, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Enforcement, see Unif. R. Youth Ct. Prac. Rule 22.

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 7 et seq.

CJS. 43 C.J.S., Infants §§ 61-63, 65 et seq.

ADJUDICATION

SEC.
43-21-551. Scheduling of adjudicatory hearings.
43-21-553. Uncontested adjudications.
43-21-555. Plea bargaining prohibited.
43-21-557. Order of proceedings.
43-21-559. Evidence admissible.
43-21-561. Adjudication of status, standard of proof, and findings.

§ 43-21-551. Scheduling of adjudicatory hearings.

(1) Unless the hearing is continued upon a showing of good cause or the person who is a subject to the cause has admitted the allegations of the petition, an adjudicatory hearing shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is a delinquent child, a child in need of supervision, a neglected child or an abused child. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.

(2) If the child is in detention, the hearing shall be held as soon as possible but not later than twenty-one (21) days after the child is first detained by the youth court unless the hearing be postponed:

(a) upon motion of the child;

(b) where process cannot be completed; or

(c) upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from detention.

(3) If the child is held in shelter, the hearing shall be held as soon as possible but not later than thirty (30) days after the child is first taken into custody unless the hearing is postponed:

(a) upon motion of the child;

(b) where process cannot be completed; or

(c) upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from shelter.

SOURCES: Laws, 1979, ch. 506, § 58; Laws, 1980, ch. 550, § 21, eff from and after July 1, 1980.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Adjudication hearings, see Unif. R. Youth Ct. Prac. Rule 24.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Time limitations.
3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Proceedings violated the Youth Court Law, and consequently, the right of a juvenile and his parents to due process, because the youth court never held an adjudicatory hearing, despite the juvenile's being detained for a total of 133 days; when the youth court postponed the adjudicatory hearing, it did so on its own motion, and after twenty-one days from the date of the juvenile's detainment, the youth court was without authority to hold him in detention. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

The statutory requirements for an adjudicatory hearing under the Youth Court Act (§§ 43-21-101 et seq.) were met where the proceedings were recorded by a court reporter pursuant to § 43-21-203(7), the parties received notice of the hearing more than 3 days before it was scheduled to begin under § 43-21-507, and the hearing was held within 90 days of the filing of the petition under § 43-21-551; the fact that the proceeding was postponed for approximately three months was without consequence since § 43-21-551 provides that a hearing may be continued upon a showing of good cause, and therefore the hearing was held within the time provided by the Youth Court Act. In re C.R., 604 So. 2d 1079 (Miss. 1992).

While the 90-day requirement set forth in § 43-21-551 is stated in the mandatory "shall," dismissal by the youth court for failure to file within the required period after authorization to file the petition is discretionary under § 43-21-451. A youth court did not abuse its discretion in not dismissing a petition, seeking to have a child adjudged an abused child, for failure to comply with § 43-21-451's 10-day time limit where the reasons given by the youth court for not dismissing the petition were that it would not be in the best interest of the child and the tremendous case load of the youth court, and the child's father failed to demonstrate any prejudice that resulted from the 26-day delay and failed to make any inquiry concerning the case until approximately 2 months after the date of the shelter hearing. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

The Youth Court Act contemplates the existence of a youth court clerk, and a petition is deemed "filed" when delivered to that office with no necessity of filing in the circuit clerk's office. The youth court clerk is the clerk of the youth court, and therefore a petition was "filed" on the date it was delivered to the clerk of the youth court. Thus, the 90-day requirement of § 43-21-551 was complied with where the adjudicatory hearing commenced 87 days after the petition was delivered to the youth court clerk. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

If adjudicatory hearing is not held within 21 days, child may be released from detention, but petition under which child is being held need not be dismissed so long as 90 day limitation period is not exceeded. In re W.R.A., 481 So. 2d 280 (Miss. 1985).

2. Time limitations.

In a case where a full evidentiary hearing was not held until 126 days after the charging petition was filed, dismissal of the juvenile proceeding was not mandated under Miss. Code Ann. § 43-21-551(1), because an initial hearing was held 13 days after the petition was filed, and even though not titled as such, it was an adjudicatory hearing which was continued until the later full evidentiary hearing; the continuance was for good cause, namely, full evidentiary disclosure. D. D. B. v. Jackson County Youth Court, 816 So. 2d 380 (Miss. 2002).

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

The court should exercise care to assure that an admission or confession was voluntary in the sense, not only that is was not coerced or suggested, but also that it was not the product of ignorance of rights, or of adolescent fantasy, fright, or despair; the youth charged has the same right to testify for the limited purpose of testing the admissibility of a confession as an adult under a criminal charge; and any confessions or admissions which are self-incriminating must meet the constitutional standard of due process in order to be admissible at any hearing. In re Dennis, 291 So. 2d 731 (Miss. 1974).

Trial by jury in the adjudicative phase of a state juvenile court delinquency proceeding is not required under the due process clause of the Fourteenth Amendment, even though a public trial is denied. McKeiver v. Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971).

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions, Third Edition (Michie).

§ 43-21-553. Uncontested adjudications.

At any time after the petition has been filed, all parties to the cause may appear before the judge and admit the allegations of the petition. The judge may accept this admission as proof of the allegations if the judge finds that:

(a) the parties making the admission fully understand their rights and fully understand the potential consequences of their admission to the allegations;

(b) the parties making the admission voluntarily, intelligently and knowingly admit to all facts necessary to constitute a basis for court action under this chapter;

(c) the parties making the admission have not in the reported admission to the allegation set forth facts that, if found to be true, constitute a defense to the allegation; and

(d) the child making the admission is effectively represented by counsel.

SOURCES: Laws, 1979, ch. 506, § 59, eff from and after July 1, 1979.

Cross References — Inquiry at adjudicatory hearing as to admission or denial of allegations in petition, see § 43-21-557.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Acceptance of admissions, see Unif. R. Youth Ct. Prac. Rule 24.

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

§ 43-21-555. Plea bargaining prohibited.

Under no circumstances shall the party or the prosecutor engage in discussion for the purpose of agreeing to exchange concessions by the prosecutor for the party's admission to the petition.

SOURCES: Laws, 1979, ch. 506, § 60, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Plea bargaining, see Unif. R. Youth Ct. Prac. Rule 24.

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

§ 43-21-557. Order of proceedings.

(1) At the beginning of each adjudicatory hearing, the youth court shall:

(a) verify the name, age and residence of the child who is the subject of the cause and ascertain the relationship of the parties, each to the other;

(b) ascertain whether all necessary parties are present and identify all persons participating in the hearing;

(c) ascertain whether the notice requirements have been complied with and, if not, whether the affected parties intelligently waived compliance in accordance with Section 43-21-507;

(d) explain to the parties the purpose of the hearing and the possible dispositional alternatives thereof; and

(e) explain to the parties:

(i) the right to counsel;

(ii) the right to remain silent;

(iii) the right to subpoena witnesses;

(iv) the right to cross-examine witnesses testifying against him; and

(v) the right to appeal.

(2) The youth court should then ascertain whether the parties before the youth court are represented by counsel. If a party before the youth court is not represented by counsel, the youth court shall ascertain whether the party understands his right to counsel. If the party wishes to retain counsel, the youth court shall continue the hearing for a reasonable time to allow the party to obtain and consult with counsel of his choosing. If an indigent child does not have counsel, the youth court shall appoint counsel to represent the child and shall continue the hearing for a reasonable time to allow the child to consult with his appointed counsel.

(3) The youth court may then inquire whether the parties admit or deny the allegations in the petition as provided in Section 43-21-553.

(4) The youth court may at any time terminate the proceedings and dismiss the petition if the youth court finds such action to be conducive to the welfare of the child and in the best interest of the state.

SOURCES: Laws, 1979, ch. 506, § 61, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Verifying information and explaining procedures and rights, see Unif. R. Youth Ct. Prac. Rule 24.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Notice.

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Because a juvenile's father was served with his summons for hearing only two days before the hearing occurred, his service did not comply with the rules of service established by the Youth Court Law; however, the father appeared at the hearing, and any infirmity in the service was cured by the father's appearance. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

Although a youth court failed to follow the procedures in Miss. Code Ann. § 43-21-557, the error was harmless because there was no resulting prejudice or unfairness shown; defendant was allowed to cross-examine witnesses, witnesses were called to testify on her behalf, and defendant was served with a summons outlining her right to counsel and to subpoena witnesses. In the Interest of K.G., 957 So. 2d 1050 (Miss. Ct. App. 2007).

Although the youth court did not fully advise the juvenile and his parent of their rights as required by Miss. Code Ann. § 43-21-557 the error was harmless when the juvenile was at all times represented by appointed counsel with knowledge of juvenile law. In the Interest of L.C.A., 938 So. 2d 300 (Miss. Ct. App. 2006).

Appellate court reversed an order that adjudicated a minor a child in need of supervision and remanded for further proceedings as the judge failed to advise the minor or his parents that the child had certain procedural rights available to him under Miss. Code Ann. § 43-21-557. Interest, 915 So. 2d 1076 (Miss. Ct. App. 2005).

Miss. Code Ann. § 43-21-557(4) was entirely inapplicable to mother's argument that she did not receive notice of the dismissal of the petition to determine whether her child was an abused child because the court could dismiss a petition on its own volition without the prosecutor moving for dismissal, and secondly, the resulting order was with prejudice based on the requirement that the court make a finding that balanced the child's welfare with the State's interest. In the Interest of C.R., 879 So. 2d 1119 (Miss. Ct. App. 2004).

A youth court's failure to advise a child's father, prior to adjudicatory and dispositional hearings to determine whether the child should be adjudged an abused child, of certain rights pursuant to §§ 43-21-557 and 43-21-603 was harmless where the father was ably represented by counsel during both the adjudicatory and dispositional hearings, the father's counsel vigorously cross-examined the witnesses called by the youth court prosecutor and gave closing argument, the father, through his counsel, was heard on all pretrial objections to jurisdiction and other points, and the father could point to no denial of any right that would make the hearings any less than fair. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

When youth court combines neglect adjudication hearing with contempt hearing arising from neglect proceedings, court must so inform parties at outset of combined hearing. In re I.G., 467 So. 2d 920 (Miss. 1985).

When parents at educational neglect hearing are not informed of right to counsel and right to appeal, parents may file untimely appeal and neglect order will be reversed; in addition, where order upon which subsequent citation of contempt is founded directly results from interrogation during which parents are not informed of any of rights enumerated at § 43-21-557, citation for contempt must also be reversed. In re I.G., 467 So. 2d 920 (Miss. 1985).

2. Notice.

Youth court judge failed to comply with the provisions of Miss. Code Ann. § 43-21-557 prior to the commencement of an adjudicatory hearing because there was nothing in the record which contradicted a father's assertions that he never received notice for the various hearings affecting the custody of his minor son, and there was nothing in the record to even infer that the father waived notice. In the Interest of N.W., 978 So. 2d 649 (Miss. 2008).

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

Where the youth court provided competent counsel for the delinquent youth, it was not necessary under this section that the youth court provide counsel for the parents of the youth. In re Evans, 350 So. 2d 52 (Miss. 1977).

An order of the youth court adjudging two minors as delinquent was reversed and the case was remanded for further proceedings where the record failed to show that the minors were informed of their right to counsel or that they waived that right. Copeland v. State, 292 So. 2d 171 (Miss. 1974).

In proceedings to adjudge juvenile a delinquent, service of process 11 days before hearing afforded minor, his parents, and his attorney full time for preparation; record supported finding that youth court had venue and jurisdiction; minor fully understood his rights and his statement was freely and voluntarily made after his constitutional rights were explained to him; and minor waived his right to confrontation by the accusing witness, a young girl, by making no mention or request for her personal appearance at the hearing. In re Wise, 291 So. 2d 727 (Miss. 1974).

It is well settled in our jurisprudence that a juvenile is entitled to many of the constitutional rights afforded an adult where "critically important actions determining vitally important statutory rights of the juvenile are concerned", the juvenile is entitled to a hearing upon constitutional principles relating to due process with the assistance of counsel. Patterson v. Hopkins, 350 F. Supp. 676 (N.D. Miss. 1972), aff'd, 481 F.2d 640 (5th Cir. 1973).

Although trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement it is an inescapable conclusion that while all of the constitutional guarantees accorded an adult are not required in juvenile proceedings, the applicable due process standard in juvenile proceedings is "fundamental fairness". Patterson v. Hopkins, 350 F. Supp. 676 (N.D. Miss. 1972), aff'd, 481 F.2d 640 (5th Cir. 1973).

A juvenile has the same right to due process as an adult has under the Constitution of the United States and the state Bill of Rights. Dependents of Roberts v. Holiday Parks, 221 So. 2d 92 (Miss. 1969).

This section [Code 1942, § 7185-08] recognizes that matters brought under this act may be adversary proceedings, and it is only fitting and proper that the minor and his parents be advised that they are entitled to legal representation, and the court in delinquency proceedings should so advise them. Krebs v. Stephenson, 184 So. 2d 861 (Miss. 1966).

RESEARCH REFERENCES

ALR. Right to and appointment of counsel in juvenile court proceedings. 60 A.L.R.2d 691.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Forms 71, 72 (right to counsel).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

Lawyers' Edition. Procedural requirements under federal constitution in juvenile delinquency proceedings. 25 L. Ed. 2d 950.

Supreme Court's views as to what comments by prosecuting attorney violate accused's privilege against self-incrimination under Federal Constitution's Fifth Amendment. 99 L. Ed. 2d 926.

§ 43-21-559. Evidence admissible.

(1) In arriving at its adjudicatory decision, the youth court shall consider only evidence which has been formally admitted at the adjudicatory hearing. All testimony shall be under oath and may be in narrative form. In proceedings to determine whether a child is a delinquent child or a child in need of supervision, the youth court shall admit any evidence that would be admissible in a criminal proceeding. In proceedings to determine whether a child is a neglected child or an abused child, the youth court shall admit any evidence that would be admissible in a civil proceeding.

(2) An out-of-court admission by the child, even if otherwise admissible, shall be insufficient to support an adjudication that the child is a delinquent child unless the admission is corroborated in whole or in part by other competent evidence.

(3) Members of the youth court staff may appear as witnesses except that no member of the youth court staff may testify as to an admission or confession made to him.

(4) At the conclusion of the evidence, the youth court shall give the parties an opportunity to present oral argument.

SOURCES: Laws, 1979, ch. 506, § 62, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Inapplicability of Mississippi Rules of Evidence in youth court cases, see Miss. R. Evid. 1101.

Evidence, see Unif. R. Youth Ct. Prac. Rule 24.

JUDICIAL DECISIONS

I. Under Current Law.

1. Out-of-court admissions.
2. Particular applications.

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. Out-of-court admissions.

As to defendant's alleged possession of a controlled substance, several students either testified or submitted written statements implicating defendant in drug activity at the subject school, but none of those students could testify to dates, and no tangible evidence of a chemically analyzed controlled substance was offered by the State at any time during the hearing. An agent for the State simply testified that the youth's descriptions of the various pills corresponded with the descriptions of several Schedule II drugs; secondly, although a number of the youths stated that defendant told them he was stealing pills and selling them, standing alone, those statements (out-of-court admissions by a child defendant), were insufficient to support an adjudication of delinquency, and the evidence failed to meet the required proof beyond a reasonable doubt standard, which was applicable to adult proceedings as well as juvenile proceedings. In the Interest of T.B., 909 So. 2d 131 (Miss. Ct. App. 2005).

An adjudication of delinquency cannot be based solely on the unsubstantiated incriminating statement of the juvenile. J.P.C. v. State (In the Interest of J.P.C.), 783 So. 2d 778 (Miss. Ct. App. 2000).

2. Particular applications.

In a delinquency adjudication for the act of burglary, any statement by the juvenile was inadmissible under Miss. Code Ann. § 43-21-559 (Rev. 2009) because it was uncorroborated where the only other evidence presented was a low-resolution, home-surveillance video, which directed contradicted the juvenile's statement. Testimony of witnesses who merely had watched the surveillance video likewise did not corroborate such an "admission." C.K.B. v. Harrison County Youth Court, 36 So. 3d 1267 (Miss. 2010).

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

This section did not bar admission into evidence in defendant's trial for armed robbery of known fingerprints that had been taken when defendant was a youth, particularly since § 99-15-13 [repealed] permits law enforcement officers to take the fingerprints of those charged with crime for identification purposes, where there was no evidence that the known fingerprints had been given in evidence in a youth court proceeding. Nixon v. State, 336 So. 2d 742 (Miss. 1976).

Where no evidence was offered as to the ownership of places allegedly burglarized except passing references by state witnesses to "Mrs. Edmond's Fruit Stand" and "Johnny Cleveland's Trailer Park," this was hearsay on the part of the witnesses and consequently inadmissible, and inasmuch as there was no proof of ownership of the premises allegedly burglarized or the name of the person entitled to possession thereof, the judgment of the youth court adjudging a child to be a delinquent child would be reversed, the child discharged and the proceedings against him dismissed. In re Jenkins, 274 So. 2d 143 (Miss. 1973).

It was reversible error to permit the youth court referee to testify on the trial of the defendant in circuit court as to his recollection of what the defendant, a 14-year-old boy, had said on his trial in youth court when placed by his attorney upon the witness stand; for this section [Code 1942, § 7185-09] specifically prohibits the admissibility in any other court of evidence given in youth courts. Rankin v. State, 214 So. 2d 811 (Miss. 1968).

One testifying that she had been in a juvenile orphanage may not be asked why, and whether she was committed. Statham v. Blaine, 234 Miss. 649, 107 So. 2d 93 (1958), motion granted, 234 Miss. 669, 108 So. 2d 213 (1959).

RESEARCH REFERENCES

ALR. Applicability of rules of evidence in juvenile delinquency proceedings. 43 A.L.R.2d 1128.

Use of judgment in prior juvenile court proceeding to impeach credibility of witness. 63 A.L.R.3d 1112.

Consideration of accused's juvenile court record in sentencing for offense committed as adult. 64 A.L.R.3d 1291.

Propriety of trial court order limiting time for opening or closing argument in criminal case — state cases. 71 A.L.R.4th 200.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

5 Am. Jur. Trials 331, Excluding Illegally Obtained Evidence.

3 Am. Jur. Proof of Facts 2d, Child Neglect, §§ 25 et seq. (proof of physical neglect — malnutrition and lack of adequate clothing); §§ 44 et seq. (proof of

emotional neglect — child's emotional well-being endangered by parent's disturbed condition); §§ 72 et seq. (proof of medical neglect — parent's refusal to consent to blood transfusion during surgery for alleviation of facial disfigurement).

§ 43-21-561. Adjudication of status, standard of proof, and findings.

(1) If the youth court finds on proof beyond a reasonable doubt that a child is a delinquent child or a child in need of supervision, the youth court shall enter an order adjudicating the child to be a delinquent child or a child in need of supervision.

(2) Where the petition alleges that the child is a delinquent child, the youth court may enter an order that the child is a child in need of supervision on proof beyond a reasonable doubt that the child is a child in need of supervision.

(3) If the court finds from a preponderance of the evidence that the child is a neglected child, an abused child, a dependent child or a child in need of special care the youth court shall enter an order adjudicating the child to be a neglected child, an abused child, dependent child or a child in need of special care.

(4) No decree or order of adjudication concerning any child shall recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child or a child in need of supervision or a neglected child or an abused child or a sexually abused child or a dependent child or a child in need of special care. Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication that the child is a delinquent child, a child in need of supervision, a neglected child, an abused child, a dependent child or a child in need of special care.

(5) No adjudication upon the status of any child shall operate to impose any of the civil disabilities ordinarily imposed on an adult because of a criminal conviction, nor shall any child be deemed a criminal by reason of adjudication, nor shall that adjudication be deemed a conviction. A person in whose interest proceedings have been brought in the youth court may deny, without any penalty, the existence of those proceedings and any adjudication made in those proceedings. Except for the right of a defendant or prosecutor in criminal proceedings and a respondent or a youth court prosecutor in youth court proceedings to cross-examine a witness, including a defendant or respondent, to show bias or interest, no adjudication shall be used for impeachment purposes in any court.

SOURCES: Laws, 1979, ch. 506, § 63; Laws, 1980, ch. 550, § 22; Laws, 2002, ch. 410, § 1; Laws, 2010, ch. 349, § 2, eff from and after July 1, 2010.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Standard of proof, see Unif. R. Youth Ct. Prac. Rule 24.

Adjudication orders, see Unif. R. Youth Ct. Prac. Rule 25.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Burden of proof.
3. Evidence; examination of witnesses.
4. Notification and other parental rights.
5. Particular applications.
6. Miscellaneous.

7-10. [Reserved for future use].

II. Under Former Law.

11. In general.

I. Under Current Law.

1. In general.

The Youth Court Act was not intended to and does not prohibit the use of corporal punishment in disciplining a child. Injury is labeled abusive only when it constitutes maltreatment. In re A.R., 579 So. 2d 1269 (Miss. 1991).

2. Burden of proof.

A child may be adjudged "a child in need of supervision" and removed from parents only upon proof beyond a reasonable doubt. In re M.R.L., 488 So. 2d 788 (Miss. 1986).

There is no merit to contention that burden of proof in neglect proceeding should be clear and convincing evidence. In re I.G., 467 So. 2d 920 (Miss. 1985).

3. Evidence; examination of witnesses.

Youth court properly found that a four-year-old child was neglected because four different family members all stated that the child was being sexually abused by his 11-year-old brother, one of the family members provided eyewitness testimony of a sexual encounter between the child and his brother, and a forensic interview neither confirmed nor rejected the allegations of sexual abuse. Smith v. Coahoma County Dep't of Human Servs. (in the I nterest of Joey), — So. 3d —, 2014 Miss. App. LEXIS 596 (Miss. Ct. App. Oct. 21, 2014).

Defendant sought to attack the victim's credibility and show that she had a motive to lie for ill will by introducing evidence at trial regarding a juvenile adjudication of a shoplifting charge, and notwithstanding the prohibition on the use of a juvenile adjudication for the purpose of impeachment, the crime of shoplifting could not be used for impeachment purposes because it was not a crime categorized as crimen falsi; thus, the trial court did not err in excluding defendant's questioning regarding the victim's juvenile shoplifting adjudication. Evans v. State, 984 So. 2d 308 (Miss. Ct. App. 2007), writ of certiorari denied by 984 So. 2d 277, 2008 Miss. LEXIS 289 (Miss. 2008).

In a capital murder trial, defense counsel was able to adequately question an eyewitness to the crime about his relevant juvenile record, even though the questioning was limited; the trial court permitted questioning about two instances: one was relating to where the eyewitness met defendant and the other was relating to a conviction for auto theft, which showed a propensity for dishonesty and a motive to steal a murder victim's vehicle. Ramsey v. State, 959 So. 2d 15 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 958 So. 2d 1232, 2007 Miss. LEXIS 588 (Miss. 2007).

The right to cross-examine a witness as to prior convictions in order to show bias or interest is guaranteed an accused under the Sixth Amendment and should be interpreted liberally to favor the accused; however, an accused does not have an absolute right under § 13-1-13 or case law prior to adoption of the Mississippi Rules of Evidence to require a witness to disclose any prior convictions in order to attack his or her credibility simply because the witness had been convicted of a criminal offense. Bass v. State, 597 So. 2d 182 (Miss. 1992).

Section 43-21-561(5) and Rule 609(d), Miss. R. Ev. serve the same purpose, have the same objective, and, though worded differently, provide the same general criterion for a trial judge in exercising his or her discretion to determine whether a previous youth court adjudication should be admissible in the cross-examination of a minor witness; the only difference is that under the Rule a criminal defendant may not be cross-examined as to his or her prior youth court adjudications, so that, in a criminal case, the court's discretion extends only to witnesses other than the accused. Bass v. State, 597 So. 2d 182 (Miss. 1992).

Criminal defendants were properly precluded from cross-examining the State's juvenile witness as to his juvenile record where the trial court told the defense attorneys that they could cross-examine the witness to show special treatment, offers or concessions, or to show any bias or interest, but could not just ask him about his juvenile court record, the defense attorneys did not make any proffer of what they expected to show by cross-examining the witness as to his youth court record except a general statement to show "bias or interest," and the defense attorneys did not attempt before the jury to explore the witness' state of mind when he was questioned by the police or the State. Bass v. State, 597 So. 2d 182 (Miss. 1992).

4. Notification and other parental rights.

When parents at educational neglect hearing are not informed of right to counsel and right to appeal, parents may file untimely appeal and neglect order will be reversed; in addition, where order upon which subsequent citation of contempt is founded directly results from interrogation during which parents are not informed of any of rights enumerated at § 43-21-557, citation for contempt must also be reversed. In re I.G., 467 So. 2d 920 (Miss. 1985).

5. Particular applications.

There was insufficient evidence to adjudicate a juvenile a delinquent child for the act of burglary, a violation of Miss. Code Ann. § 97-17-23(1), where there was no evidence that the juvenile broke and entered the dwelling house, or had any intent to commit any crime therein; thus, neither element of burglary was proven beyond a reasonable doubt. C.K.B. v. Harrison County Youth Court, 36 So. 3d 1267 (Miss. 2010).

In a case in which a mother appealed a youth court's adjudication that she had neglected her two minor children and had placed the children in the legal custody of the Department of Human Services (DHS), the facts supported the youth court's finding that, at minimum, the children were not being provided the proper and necessary care or support or other care necessary for their well-being. The youth court was presented with conflicting testimony about the mother's care and support for her children, and based on the mother's alarming actions and statements that she would turn the children over to DHS, it could not be concluded with confidence that the youth court judge's decision was manifestly wrong. S. v. State, 47 So. 3d 715 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 606 (Miss. 2010).

The evidence was insufficient to support a finding that a deaf child was "educationally neglected" within the meaning of the Youth Court Act (§§ 43-21-101 et seq.) where the child was enrolled in the best public school situation available to her in her local community, and therefore the court erred in ruling that the child should be removed from her home and placed in the Mississippi School for the Deaf; a court cannot remove a child from her home and family simply because a more desirable setting is available elsewhere, as the court must first find a failure of the child's environment and then take steps to protect the child's interests. In re C.R., 604 So. 2d 1079 (Miss. 1992).

A high school student was properly adjudicated delinquent for having handguns on school grounds, where the guns were found in the student's locker, the student had exclusive possession of the locker and kept it under lock and key, and a second student testified that the first student had offered to sell him 2 handguns and had told him that he had the guns at school. S.C. v. State, 583 So. 2d 188 (Miss. 1991).

The evidence was insufficient to support a finding that 2 minor children, who had bruises on their buttocks from a spanking with a leather strap which resulted from conversations the children's mother had with their teachers regarding the children's behavior problem, were abused children within the meaning of the Youth Court Act, where the social worker did not interview the children's teacher who had reported the behavioral problems to the mother, she did not review the children's school records, she did not interview the children's mother or step-father or examine the home environment of the children, she did not talk to the medical doctor who examined the children for evidence of child abuse, she did not look at the strap used in the discipline of the children, she did not have the children tested or evaluated by experts, and the record did not contain any medical records showing evidence of physical abuse. In re A.R., 579 So. 2d 1269 (Miss. 1991).

The siblings of a child who had been sexually abused by the children's father were neglected and abused minor children within the meaning of the Youth Court Act by virtue of the fact that their sister was abused. An order enjoining the father from contact with the siblings until successful completion of a child sex abuse treatment program was justified by the potential harm those children would be subjected to in light of the fact that the father had already perpetrated sexual abuse upon one of his children. E.S. v. State, 567 So. 2d 848 (Miss. 1990).

The evidence was sufficient to support a finding that a child had been sexually abused by her father, and was therefore an "abused child" under the Youth Court Act, where statements made by the child to a psychologist were offered into evidence, and the psychologist testified that it was his opinion that the child had been sexually abused by her father, even though the father denied engaging in any kind of sexual activity with the child and the child's mother was of the opinion that the father had not sexually abused the child. E.S. v. State, 567 So. 2d 848 (Miss. 1990).

While a juvenile's intentional touching and squeezing of a pregnant woman's derriere, without permission, amounted to a physical offense, this conduct did not constitute simple assault under § 97-3-7(1)(a)(iii) where there was no proof of fear of imminent serious bodily harm. Thus, the juvenile's adjudication of delinquency would be reversed based on the failure to prove an essential element of the crime of simple assault. S.B. v. State, 566 So. 2d 1276 (Miss. 1990).

Record containing substantial evidence that each of three children had been habitually disobedient of reasonable and lawful commands of his or her parents and was ungovernable supported beyond a reasonable doubt the findings of the Youth Court that each was a child in need of treatment or rehabilitation. In re M.R.L., 488 So. 2d 788 (Miss. 1986).

6. Miscellaneous.

Juvenile who has been adjudicated delinquent in youth court may not subsequently be tried as adult on same charges. In re W.R.A., 481 So. 2d 280 (Miss. 1985).

7-10. [Reserved for future use].

II. Under Former Law.

11. In general.

It is well settled in our jurisprudence that a juvenile is entitled to many of the constitutional rights afforded an adult where "critically important actions determining vitally important statutory rights of the juvenile are concerned", the juvenile is entitled to a hearing upon constitutional principles relating to due process with the assistance of counsel. Patterson v. Hopkins, 350 F. Supp. 676 (N.D. Miss. 1972), aff'd, 481 F.2d 640 (5th Cir. 1973).

Although trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement it is an inescapable conclusion that while all of the constitutional guarantees accorded an adult are not required in juvenile proceedings, the applicable due process standard in juvenile proceedings is "fundamental fairness". Patterson v. Hopkins, 350 F. Supp. 676 (N.D. Miss. 1972), aff'd, 481 F.2d 640 (5th Cir. 1973).

In youth court cases involving a child's possible loss of freedom, the proof must establish each and every essential element of the charges against him beyond a reasonable doubt. In re Napp, 273 So. 2d 502 (Miss. 1973).

A youth "who violates any state law or municipal ordinance," even though it be his first such offense, may be adjudicated to be a "delinquent child" unless some violation is by some other applicable statute excluded from the purview of Code 1942 § 7185-02(g). In re Suratt, 273 So. 2d 178 (Miss. 1973).

The right of an accused to confront and cross-examine his accuser is so broad and fundamental as to transcend the right of a juvenile accuser to keep secret his former delinquent activity, and the refusal to permit a full cross-examination of a juvenile whose testimony implicated one defendant with possession of LSD, and who had been adjudged a juvenile delinquent, and was afraid of being returned to the training school, was error. Hamburg v. State, 248 So. 2d 430 (Miss. 1971).

Although the law presumes that the welfare of a child is best promoted by parental custody as against the advantages of a better culture or more lavish provision elsewhere, this presumption may be negated by parental abandonment or unfitness. Reynolds v. Davidow, 200 Miss. 480, 27 So. 2d 691 (1946).

ATTORNEY GENERAL OPINIONS

If acts of a student, although not rising to the level of a felony, are such that the student poses a threat to the safety of himself or others or will disrupt the educational process at the Alternative School, then the School Board may remove the student from the school system altogether. If a compulsory-school-age child is expelled from the Alternative School for criminal or violent behavior, the school district must refer the case to the youth court if probable cause exists. Maples, February 2, 2007, A.G. Op. #07-00025, 2007 Miss. AG LEXIS 1.

RESEARCH REFERENCES

ALR. Construction and effect of statutes mandating consideration of, or creating presumptions regarding, domestic violence in awarding custody of children. 51 A.L.R.5th 241.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

41 Am. Jur. Trials 1, Social Worker Malpractice for Failure to Protect Foster Children.

3 Am. Jur. Proof of Facts 2d, Child Neglect, §§ 25 et seq. (proof of physical neglect — malnutrition and lack of adequate clothing); §§ 44 et seq. (proof of emotional neglect — child's emotional well-being endangered by parent's disturbed condition); §§ 72 et seq. (proof of medical neglect — parent's refusal to consent to blood transfusion during surgery for alleviation of facial disfigurement).

DISPOSITION

SEC.
43-21-601. Scheduling of disposition hearing.
43-21-603. Disposition hearing procedure.
43-21-605. Disposition alternatives in delinquency cases.
43-21-607. Dispositional alternatives in children in need of supervision cases.
43-21-609. Dispositional alternatives in neglect and abuse cases.
43-21-611. Dispositional alternatives for children in need of special care.
43-21-613. Modification of disposition orders, probation or parole.
43-21-615. Costs of conveying and treatment.
43-21-617. Protective orders.
43-21-619. Power to order parents to pay child's expenses and restitution or to participate in counseling or family treatment program; orders to constitute civil judgment.
43-21-621. Power to order public school to enroll child; placement in alternative school program; school-related conditions of probation; notification of principal.
43-21-623. Testing of juvenile delinquents under the jurisdiction of the youth court for HIV and AIDS.

43-21-625. Wilderness training program for certain juvenile offenders.
43-21-627. Alternative work program; qualified offenders; volunteers; supervision; removal from program.

§ 43-21-601. Scheduling of disposition hearing.

(1) If the child has been adjudicated a delinquent child, a child in need of supervision, a neglected child or an abused child, the youth court shall immediately set a time and place for a disposition hearing which shall be separate, distinct and subsequent to the adjudicatory hearing. The disposition hearing, however, may be held immediately following the adjudicatory hearing unless a continuance is necessary to allow the parties to prepare for their participation in the proceedings.

(2) If the child has been taken into custody, a disposition hearing shall be held within fourteen (14) days after the adjudicatory hearing unless good cause be shown for postponement.

SOURCES: Laws, 1979, ch. 506, § 64, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Disposition hearings, see Unif. R. Youth Ct. Prac. Rule 26.

JUDICIAL DECISIONS

1. In general.

A trial court committed error by failing to conduct a separate and distinct dispositional hearing as required by § 43-21-601 of the Youth Court Act (§§ 43-21-101 et seq.) where the court determined, at the conclusion of the adjudicatory hearing which resulted in a finding that the child was educationally neglected, that the child should be placed in the Mississippi School for the Deaf. In re C.R., 604 So. 2d 1079 (Miss. 1992).

It was not error for the youth court to conduct a disposition hearing immediately after adjudicating the juvenile as a delinquent when there was no indication that a continuance was necessary. In the Interest of L.C.A., 938 So. 2d 300 (Miss. Ct. App. 2006).

In a delinquency proceeding the lower court improperly entered a disposition order after entering an order adjudicating a boy to be a delinquent child, where such action constituted a combination of the adjudicatory hearing and the disposition hearing in violation of § 43-21-601. In re J.E.J., 419 So. 2d 1032 (Miss. 1982).

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

Law Reviews. 1982 Mississippi Supreme Court Review: Criminal Law and Procedure: rape. 53 Miss. L. J. 149, March 1983.

§ 43-21-603. Disposition hearing procedure.

(1) At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.

(2) All testimony shall be under oath unless waived by all parties and may be in narrative form. The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence. At the conclusion of the evidence, the youth court shall give the parties an opportunity to present oral argument.

(3) If the child has been adjudicated a delinquent child, before entering a disposition order, the youth court should consider, among others, the following relevant factors:

(a) The nature of the offense;

(b) The manner in which the offense was committed;

(c) The nature and number of a child's prior adjudicated offenses;

(d) The child's need for care and assistance;

(e) The child's current medical history, including medication and diagnosis;

(f) The child's mental health history, which may include, but not be limited to, the Massachusetts Youth Screening Instrument version 2 (MAYSI-2);

(g) Copies of the child's cumulative record from the last school of record, including special education records, if applicable;

(h) Recommendation from the school of record based on areas of remediation needed;

(i) Disciplinary records from the school of record; and

(j) Records of disciplinary actions outside of the school setting.

(4) If the child has been adjudicated a child in need of supervision, before entering a disposition order, the youth court should consider, among others, the following relevant factors:

(a) The nature and history of the child's conduct;

(b) The family and home situation; and

(c) The child's need of care and assistance.

(5) If the child has been adjudicated a neglected child or an abused child, before entering a disposition order, the youth court shall consider, among others, the following relevant factors:

(a) The child's physical and mental conditions;

(b) The child's need of assistance;

(c) The manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;

(d) The ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and

(e) Relevant testimony and recommendations, where available, from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

(6) After consideration of all the evidence and the relevant factors, the youth court shall enter a disposition order that shall not recite any of the facts

or circumstances upon which the disposition is based, nor shall it recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child, a child in need of supervision, a neglected child or an abused child.

(7) If the youth court orders that the custody or supervision of a child who has been adjudicated abused or neglected be placed with the Department of Human Services or any other person or public or private agency, other than the child's parent, guardian or custodian, the youth court shall find and the disposition order shall recite that:

(a)(i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody; and

(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody; and

(b) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that the placement of the child in foster care is in the best interests of the child; or

(c) Reasonable efforts to maintain the child within his home shall not be required if the court determines that:

(i) The parent has subjected the child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse and sexual abuse; or

(ii) The parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or

(iii) The parental rights of the parent to a sibling have been terminated involuntarily; and

(iv) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child.

Once the reasonable efforts requirement is bypassed, the court shall have a permanency hearing under Section 43-21-613 within thirty (30) days of the finding.

(8) Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the disposition order. If the disposition ordered by the youth court includes placing the child in the custody of a training school, an admission packet shall be prepared for the child that contains the following information:

(a) The child's current medical history, including medications and diagnosis;

(b) The child's mental health history;

(c) Copies of the child's cumulative record from the last school of record, including special education records, if reasonably available;

(d) Recommendation from the school of record based on areas of remediation needed;

(e) Disciplinary records from the school of record; and

(f) Records of disciplinary actions outside of the school setting, if reasonably available.

Only individuals who are permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) shall have access to a child's medical records which are contained in an admission packet. The youth court shall provide the admission packet to the training school at or before the child's arrival at the training school. The admittance of any child to a training school shall take place between the hours of 8:00 a.m. and 3:00 p.m. on designated admission days.

(9) When a child in the jurisdiction of the Youth Court is committed to the custody of the Mississippi Department of Human Services and is believed to be in need of treatment for a mental or emotional disability or infirmity, the Department of Human Services shall file an affidavit alleging that the child is in need of mental health services with the Youth Court. The Youth Court shall refer the child to the appropriate community mental health center for evaluation pursuant to Section 41-21-67. If the prescreening evaluation recommends residential care, the Youth Court shall proceed with civil commitment pursuant to Sections 41-21-61 et seq., 43-21-315 and 43-21-611, and the Department of Mental Health, once commitment is ordered, shall provide appropriate care, treatment and services for at least as many adolescents as were provided services in fiscal year 2004 in its facilities.

SOURCES: Laws, 1979, ch. 506, § 65; Laws, 1985, ch. 486, § 7; Laws, 1997, ch. 440, § 13; Laws, 1998, ch. 516, § 12; Laws, 1999, ch. 569, § 2; Laws, 2004, ch. 443, § 1; Laws, 2004, ch. 489, § 5; Laws, 2004, ch. 549, § 1; Laws, 2005, ch. 535, § 1; Laws, 2006, ch. 600, § 6, eff from and after July 1, 2006.

Joint Legislative Committee Note — Section 1 of ch. 443 Laws of 2004, effective from and after July 1, 2004 (approved April 28, 2004), amended this section. Section 5 of ch. 489, Laws of 2004, effective from and after July 1, 2004 (approved May 4, 2004), also amended this section. Section 1 of ch. 549, Laws of 2004 effective from and after July 1, 2004 (approved May 13, 2004), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 549, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Disposition hearing proceedings, see Unif. R. Youth Ct. Prac. Rule 26.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Evidence.
3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Youth court's adjudication of delinquency and disposition were proper because it was not allowed to include in its disposition order the very information that a juvenile requested, any argument that the detention was unreasonable or inappropriate was moot due to his release from detention, and the juvenile's supervised probation, though not limited in time, was not inappropriate or unreasonable. In the Interest of J.C.M., — So. 3d —, 2014 Miss. App. LEXIS 140 (Miss. Ct. App. Mar. 18, 2014).

Youth court took into consideration the factors in Miss. Code Ann. § 43-21-603 when it committed defendant to a training school and placed her on probation until her 18th birthday in a case where defendant assaulted a teacher; the youth court clearly found that defendant's therapy and medications were not working. In the Interest of K.G., 957 So. 2d 1050 (Miss. Ct. App. 2007).

Youth court did not err in ordering that it was in the best interest of the child to grant durable legal custody to the foster parents, based on the child's situation of chronic abuse and long-term physical placement with the same foster family, as opposed to reunification with the mother. In re S.A.M., 826 So. 2d 1266 (Miss. 2002).

Youth court erred in directing that physical custody of infant be given to relatives as consideration of the five-factor test in Miss. Code Ann. § 43-21-603(5) and the testimony of government agencies, the infant's guardian ad litem, various doctors, and family members compelled the conclusion that the infant's relatives were unable to provide proper care and supervision for the infant and that her best interests dictated that she be placed in foster care. In re E.M., 810 So. 2d 596 (Miss. 2002).

The evidence was insufficient to support a finding that a deaf child was "educationally neglected" within the meaning of the Youth Court Act (§§ 43-21-101 et seq.) where the child was enrolled in the best public school situation available to her in her local community, and therefore the court erred in ruling that the child should be removed from her home and placed in the Mississippi School for the Deaf; a court cannot remove a child from her home and family simply because a more desirable setting is available elsewhere, as the court must first find a failure of the child's environment and then take steps to protect the child's interests. In re C.R., 604 So. 2d 1079 (Miss. 1992).

Where the testimony of a child is needed, it should not be declined except to avoid serious risk to the welfare of the child. To avoid this damage, the trial court must have considerable discretion as to the conduct of the examination and the appearance of the courtroom. Bailey v. Woodcock, 574 So. 2d 1369 (Miss. 1990).

A youth court's failure to advise a child's father, prior to adjudicatory and dispositional hearings to determine whether the child should be adjudged an abused child, of certain rights pursuant to §§ 43-21-557 and 43-21-603 was harmless where the father was ably represented by counsel during both the adjudicatory and dispositional hearings, the father's counsel vigorously cross-examined the witnesses called by the youth court prosecutor and gave closing argument, the father, through his counsel, was heard on all pretrial objections to jurisdiction and other points, and the father could point to no denial of any right that would make the hearings any less than fair. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

2. Evidence.

Youth court had authority pursuant to Miss. Code Ann. § 43-21-603(3)(c) to consider in a disposition proceeding all relevant factors, including the fact that the juvenile had been previously adjudicated as a child in need of services. In the

Interest of L.C.A., 938 So. 2d 300 (Miss. Ct. App. 2006).

As to defendant's alleged possession of a controlled substance, several students either testified or submitted written statements implicating defendant in drug activity at the subject school, but none of those students could testify to dates, and no tangible evidence of a chemically analyzed controlled substance was offered by the State at any time during the hearing. An agent for the State simply testified that the youth's descriptions of the various pills corresponded with the descriptions of several Schedule II drugs; secondly, although a number of the youths stated that defendant told them he was stealing pills and selling them, standing alone, those statements (out-of-court admissions by a child defendant), were insufficient to support an adjudication of delinquency, and the evidence failed to meet the required proof beyond a reasonable doubt standard, which was applicable to adult proceedings as well as juvenile proceedings. In the Interest of T.B., 909 So. 2d 131 (Miss. Ct. App. 2005).

The lower court could have bypassed the "reasonable efforts" to reunite the children with the parents and could have expedited the matter as a preference case for termination of parental rights where both parents refused to acknowledge the father's sexual abuse of the children at issue, the father failed to obtain counseling though the court-ordered program, and the mother failed to establish her own home independent of the father and work with the department of human services for the return of the children. S.R.B.R. v. Harrison County Dep't of Human Servs., 798 So. 2d 437 (Miss. 2001).

Sections 43-21-603 and 43-21-613 clearly contemplate that strict adherence to the rules of evidence will not be required, and "concerns over hearsay evidence and the like are basically dismissed." Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

This section [Code 1942, § 7201] does not require that an order of committal to a proper state institution affirmatively recite that it is to the best interest of the child and the public that the child be so committed. Williams v. Bush, 199 Miss. 382, 24 So. 2d 863 (1946).

Where delinquents under eighteen years of age had been arrested for the commission of a crime to which they pleaded guilty but the delinquents were not convicted therefor and no criminal sentence imposed upon them, this section [Code 1942, § 7201] rather than Code 1942, § 6755 applies so that the court, acting as a juvenile court, had jurisdiction to commit them to the proper state institution even though there was no affirmative finding that it was for the best interests of the delinquents and of the public that they should be so committed. Williams v. Bush, 199 Miss. 382, 24 So. 2d 863 (1946).

Proceeding to commit minor for delinquency or violation of law involving moral turpitude is civil and not criminal; jury trial is not required in such proceeding. Bryant v. Brown, 151 Miss. 398, 118 So. 184, 60 A.L.R. 1325 (1928).

RESEARCH REFERENCES

ALR. Propriety of trial court order limiting time for opening or closing argument in criminal case — state cases. 71 A.L.R.4th 200.

Defense of infancy in juvenile delinquency proceedings. 83 A.L.R.4th 1135.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-605. Disposition alternatives in delinquency cases.

(1) In delinquency cases, the disposition order may include any of the following alternatives:

(a) Release the child without further action;

(b) Place the child in the custody of the parents, a relative or other persons subject to any conditions and limitations, including restitution, as the youth court may prescribe;

(c) Place the child on probation subject to any reasonable and appropriate conditions and limitations, including restitution, as the youth court may prescribe;

(d) Order terms of treatment calculated to assist the child and the child's parents or guardian which are within the ability of the parent or guardian to perform and which are not in conflict with a provider's determination of medical necessity;

(e) Order terms of supervision which may include participation in a constructive program of service or education or civil fines not in excess of Five Hundred Dollars ($500.00), or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of performance within one (1) year;

(f) Suspend the child's driver's license by taking and keeping it in custody of the court for not more than one (1) year;

(g) Give legal custody of the child to any of the following:

(i) The Department of Human Services for appropriate placement; or

(ii) Any public or private organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court; or

(iii) The Division of Youth Services for placement in the least restrictive environment, except that no child under the age of ten (10) years shall be committed to the state training school. Only a child who has been adjudicated delinquent for a felony may be committed to the training school. In the event a child is committed to the Oakley Youth Development Center by the court, the child shall be deemed to be committed to the custody of the Department of Human Services which may place the child in the Oakley Youth Development Center or another appropriate facility.

The training school may retain custody of the child until the child's twentieth birthday but for no longer. When the child is committed to the training school, the child shall remain in the legal custody of the training school until the child has made sufficient progress in treatment and rehabilitation and it is in the best interest of the child to release the child. However, the superintendent of the state training school, in consultation with the treatment team, may parole a child at any time he or she may deem it in the best interest and welfare of such child. Ten (10) business days before the parole, the training school shall notify the committing court of the pending release. This notice may be made in less than ten (10) days if Oakley Youth Development Center needs to manage population limitations. The youth court may then arrange subsequent placement after a reconvened disposition hearing, except that the youth court may not recommit the child to the training school or any other secure facility without an adjudication of a new offense or probation or parole violation. The Department of Human Services shall ensure that staffs create transition planning for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's training school education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers. Before assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child. No child shall be placed in the custody of the state training school for a status offense or for contempt of or revocation of a status offense adjudication unless the child is contemporaneously adjudicated for having committed an act of delinquency that is not a status offense. A disposition order rendered under this subparagraph shall meet the following requirements:

1. The disposition is the least restrictive alternative appropriate to the best interest of the child and the community;

2. The disposition allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and

3. The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;

(h) Recommend to the child and the child's parents or guardian that the child attend and participate in the Youth Challenge Program under the Mississippi National Guard, as created in Section 43-27-203, subject to the selection of the child for the program by the National Guard; however, the child must volunteer to participate in the program. The youth court shall not order any child to apply for or attend the program;

(i) Adjudicate the juvenile to the Statewide Juvenile Work Program if the program is established in the court's jurisdiction. The juvenile and his or her parents or guardians must sign a waiver of liability in order to participate in the work program. The judge will coordinate with the youth services counselors as to placing participants in the work program as follows:

(i) The severity of the crime, whether or not the juvenile is a repeat offender or is a felony offender will be taken into consideration by the judge when adjudicating a juvenile to the work program. The juveniles adjudicated to the work program will be supervised by police officers or reserve officers. The term of service will be from twenty-four (24) to one hundred twenty (120) hours of community service. A juvenile will work the hours to which he or she was adjudicated on the weekends during school and weekdays during the summer. Parents are responsible for a juvenile reporting for work. Noncompliance with an order to perform community service will result in a heavier adjudication. A juvenile may be adjudicated to the community service program only two (2) times;

(ii) The judge shall assess an additional fine on the juvenile which will be used to pay the costs of implementation of the program and to pay for supervision by police officers and reserve officers. The amount of the fine will be based on the number of hours to which the juvenile has been adjudicated;

(j) Order the child to participate in a youth court work program as provided in Section 43-21-627;

(k) Order terms of house arrest under the intensive supervision program as created in Sections 47-5-1001 through 47-5-1015. The Department of Human Services shall take bids for the placement of juveniles in the intensive supervision program. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program. For each county there shall be seventy-five (75) slots created in the intensive supervision program for juveniles. Any youth ordered into the intensive home-based supervision program shall receive comprehensive strength-based needs assessments and individualized treatment plans. Based on the assessment, an individualized treatment plan shall be developed that defines the supervision and programming that is needed by a youth. The treatment plan shall be developed by a multidisciplinary team that includes the family of the youth whenever possible. The juvenile shall pay Ten Dollars ($10.00) to offset the cost of administering the alcohol and drug test. The juvenile must attend school, alternative school or be in the process of working toward a High School Equivalency Diploma certificate;

(*l*)(i) Order the child into a juvenile detention center operated by the county or into a juvenile detention center operated by any county with which the county in which the court is located has entered into a contract for the purpose of housing delinquents. The time period for detention cannot exceed ninety (90) days, and any detention exceeding forty-five (45) days shall be administratively reviewed by the youth court no later than forty-five (45) days after the entry of the order. At that time the youth court counselor shall review the status of the youth in detention and shall report any concerns to the court. The youth court judge may order that the number of days specified in the detention order be served either throughout the week or on weekends only. No first-time nonviolent youth offender shall be committed to a detention center for a period in excess of ninety (90) days until all other options provided for in this section have been considered and the court makes a specific finding of fact by a preponderance of the evidence by assessing what is in the best rehabilitative interest of the child and the public safety of communities and that there is no reasonable alternative to a nonsecure setting and therefore commitment to a detention center is appropriate.

(ii) If a child is committed to a detention center for ninety (90) days, the disposition order shall meet the following requirements:

1. The disposition order is the least restrictive alternative appropriate to the best interest of the child and the community;

2. The disposition order allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and

3. The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;

(m) The judge may consider house arrest in an intensive supervision program as a reasonable prospect of rehabilitation within the juvenile justice system. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program;

(n) Referral to A-team provided system of care services; or

(o) Place the child on electronic monitoring subject to any conditions and limitations as the youth court may prescribe.

(2) If a disposition order requires that a child miss school due to other placement, the youth court shall notify a child's school while maintaining the confidentiality of the youth court process. If a disposition order requires placement of a child in a juvenile detention facility, the facility shall comply with the educational services and notification requirements of Section 43-21-321.

(3) In addition to any of the disposition alternatives authorized under subsection (1) of this section, the disposition order in any case in which the child is adjudicated delinquent for an offense under Section 63-11-30 shall include an order denying the driver's license and driving privileges of the child as required under Section 63-11-30(9).

(4) If the youth court places a child in a state-supported training school, the court may order the parents or guardians of the child and other persons living in the child's household to receive counseling and parenting classes for rehabilitative purposes while the child is in the legal custody of the training school. A youth court entering an order under this subsection (4) shall utilize appropriate services offered either at no cost or for a fee calculated on a sliding scale according to income unless the person ordered to participate elects to receive other counseling and classes acceptable to the court at the person's sole expense.

(5) Fines levied under this chapter shall be paid into the general fund of the county but, in those counties wherein the youth court is a branch of the municipal government, it shall be paid into the municipal treasury.

(6) Any institution or agency to which a child has been committed shall give to the youth court any information concerning the child as the youth court may at any time require.

(7) The youth court shall not place a child in another school district who has been expelled from a school district for the commission of a violent act. For the purpose of this subsection, "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another.

(8) The youth court may require drug testing as part of a disposition order. If a child tests positive, the court may require treatment, counseling and random testing, as it deems appropriate. The costs of such tests shall be paid by the parent, guardian or custodian of the child unless the court specifically finds that the parent, guardian or custodian is unable to pay.

(9) The Mississippi Department of Human Services, Division of Youth Services, shall operate and maintain services for youth adjudicated delinquent at the Oakley Youth Development Center. The program shall be designed for children committed to the training schools by the youth courts. The purpose of the program is to promote good citizenship, self-reliance, leadership and respect for constituted authority, teamwork, cognitive abilities and appreciation of our national heritage. The program must use evidenced-based practices and gender-specific programming and must develop an individualized and specific treatment plan for each youth. The Division of Youth Services shall issue credit towards academic promotions and high school completion. The Division of Youth Services may award credits to each student who meets the requirements for a general education development certification. The Division of Youth Services must also provide to each special education eligible youth the services required by that youth's individualized education plan.

SOURCES: Laws, 1979, ch. 506, § 66; Laws, 1980, ch. 550, § 23; Laws, 1993, ch. 560, § 3; Laws, 1994, ch. 473, § 2; Laws, 1994, ch. 607, § 6; Laws, 1995, ch. 540, § 3; Laws, 1997, ch. 563, § 2; Laws, 1998, ch. 407, § 2; Laws, 1999, ch. 329, § 5; Laws, 2001, ch. 581, § 1; Laws, 2004, ch. 590, § 1; Laws, 2005, ch. 471, § 6; Laws, 2005, ch. 535, § 2; Laws, 2006, ch. 539, § 5; Laws, 2007, ch. 568, § 2; Laws, 2008, ch. 481, § 2; Laws, 2008, ch. 555, § 2; Laws, 2009, ch. 559, § 1; Laws, 2010, ch. 371, § 1; Laws, 2010, ch. 554, § 4; Laws, 2011, ch. 459, § 1; Laws, 2014, ch. 398, § 11; Laws, 2014, ch. 462, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 6 of ch. 471, Laws of 2005, effective from and after July 1, 2005 (approved April 1, 2005), amended this section. Section 2 of ch. 535, Laws of 2005, effective July 1, 2005 (approved April 21, 2005), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 535, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 2 of ch. 481, Laws of 2008, effective from and after July 1, 2008 (approved April 3, 2008), amended this section. Section 2 of ch. 555, Laws of 2008, effective from and after July 1, 2008 (approved May 10, 2008), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 555, Laws of 2008, which contains language that specifically provides that it supersedes § 43-21-605 as amended by Laws of 2008, ch. 481.

Section 1 of ch. 371, Laws of 2010, effective from and after July 1, 2010, amended this section. Section 4 of ch. 554, Laws of 2010, effective from and after July 1, 2011, also amended this section. As set out above, this section reflects the language of Section 4 of ch. 554, Laws of 2010, which contains language that specifically provides that it supersedes § 43-21-605 as amended by Laws of 2010, ch. 371.

Section 11 of Chapter 398, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014), amended this section. Section 1 of Chapter 462, Laws of 2014, effective from and after July 1, 2014 (approved March 31, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Amendment Notes — The first 2014 amendment (ch. 398), substituted "High School Equivalency Diploma" for "general educational development (GED)" in (1)(k).

The second 2014 amendment (ch. 462), in (1)(d), added "and which are not in conflict with a provider's determination of medical necessity" to the end; in (1)(g)(iii), deleted "or who has been adjudicated delinquent three (3) or more times for a misdemeanor offense" following "adjudicated delinquent for a felony" near the end of the second sentence; and deleted the third sentence in its entirety regarding what does not constitute a misdemeanor offense; in the undesignated paragraph following (1)(g)(iii), inserted the fifth sentence; deleted the clause (i) designator from "(1)(i)(i)" and redesignated the remaining subsections accordingly; in present (1)(i), added "as follows:" to the end; added (1)(l)(i) and redesigned the remaining subsections accordingly; in (1)(m), deleted "or" from the end of the sentence; in (1)(n), added "; or" at the end of the sentence; and added (1)(o).

Cross References — State training school commitment as exception to requirement that child be segregated from persons not under jurisdiction of the youth court, see § 43-21-315.

Department of youth services, generally, see §§ 43-27-2 et seq.

State training institutions, see § 43-27-29.

Creation of Statewide Juvenile Work Program, see § 43-27-37.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Disposition orders in delinquency proceedings, see Unif. R. Youth Ct. Prac. Rule 27.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Proceedings violated the Youth Court Law, and consequently, the right of a juvenile and his parents to due process, because the juvenile spent 103 days in a juvenile detention facility. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

Matter was remanded to the youth court for a new dispositional hearing because the youth court had placed the juvenile in a state-supported training school, and the placement was now prohibited, pursuant to Miss. Code Ann. § 43-21-159(5), because the juvenile had reached the age of 18; the youth court had other dispositional alternatives available to it, pursuant to Miss. Code Ann. § 43-21-605. In the Interest of L.C.A., 938 So. 2d 300 (Miss. Ct. App. 2006).

A youth court order violated § 43-21-605 where it stated that it would be inappropriate for the minor to be released from custody in less than one year, and required the superintendent of the state training school to provide the court with "conclusive proof" that parole would be in the minor's best interest, since the statute indicates that decisions regarding parole of youths are to be decided by the superintendent of the training facility. State Dep't of Human Servs. v. Forrest County Youth Court, 663 So. 2d 580 (Miss. 1995).

It was within the judge's discretion to impose a life sentence on a 17-year-old murder defendant despite the discretion afforded by the Youth Court Act. Reed v. State, 526 So. 2d 538 (Miss. 1988).

The trial judge erred in ordering a minor child, who had been adjudicated delinquent on the basis of a violation of § 97-17-3, to be confined in a training school for a minimum period of six months, under the impression that § 97-17-3(3) required him to do so, since the Youth Court Law, enacted in 1979 and amended in 1980, clearly supersedes § 97-17-3(3), so that the lower court was authorized to proceed under § 43-21-605 of the Act, which sets forth disposition alternatives in delinquency cases. In re T.D.B., 446 So. 2d 598 (Miss. 1984).

2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

Where delinquents under eighteen years of age had been arrested for the commission of a crime to which they pleaded guilty but the delinquents were not convicted therefor and no criminal sentence imposed upon them, Code 1942, § 7201 rather than Code 1942, § 6755 applies so that the court, acting as a juvenile court, had jurisdiction to commit them to the proper state institution even though there was no affirmative finding that it was for the best interests of the delinquents and of the public that they should be so committed. Williams v. Bush, 199 Miss. 382, 24 So. 2d 863 (1946).

Juvenile court possesses large discretion as to what should be done with delinquents. Williams v. Bush, 199 Miss. 382, 24 So. 2d 863 (1946).

ATTORNEY GENERAL OPINIONS

Under Section 43-21-605, electronic monitoring may be utilized as a condition or limitation of custody after a child has been adjudicated as delinquent by the court. Williamson, July 7, 1995, A.G. Op. #95-0445.

If acts of a student, although not rising to the level of a felony, are such that the student poses a threat to the safety of himself or others or will disrupt the educational process at the Alternative School, then the School Board may remove the student from the school system altogether. If a compulsory-school-age child is expelled from the Alternative School for criminal or violent behavior, the school district must refer the case to the youth court if probable cause exists. Maples, February 2, 2007, A.G. Op. #07-00025, 2007 Miss. AG LEXIS 1.

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — by license holder-against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 101 (judgment or decree — adjudging minor a delinquent child — ordering commitment to correctional institution); Form 106 (order — to show cause why custody of children should not be given to public agency); Form 108 (order — committing minor to state training school — finding of delinquency); Form 110 (order — placing minor in private home — requirement that cost of support be paid by parent or guardian); Form 116 (order — terminating court's supervision of minor); Forms 118, 119 (mittimus or warrant — commitment of minor child to correctional institution); Forms 131-136 (probation).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-607. Dispositional alternatives in children in need of supervision cases.

(1) In children in need of supervision cases, the disposition order may include any of the following alternatives or combination of the following alternatives, giving precedence in the following sequence:

(a) Release the child without further action;

(b) Place the child in the custody of the parent, a relative or other person subject to any conditions and limitations as the youth court may prescribe;

(c) Place the child under youth court supervision subject to any conditions and limitations the youth court may prescribe;

(d) Order terms of treatment calculated to assist the child and the child's parent, guardian or custodian which are within the ability of the parent, guardian or custodian to perform;

(e) Order terms of supervision which may include participation in a constructive program of service or education or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the parties and reasonably capable of performance within one (1) year;

(f) Give legal custody of the child to any of the following but in no event to any state training school;

(i) The Department of Human Services for appropriate placement which may include a wilderness training program; or

(ii) Any private or public organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. Prior to assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child; or

(g) Order the child to participate in a youth court work program as provided in Section 43-21-627.

(2) The court may order drug testing as provided in Section 43-21-605(6).

SOURCES: Laws, 1979, ch. 506, § 67; Laws, 1980, ch. 550, § 24; Laws, 1994, ch. 473, § 3; Laws, 1998, ch. 407, § 3; Laws, 2001, ch. 581, § 2, eff from and after July 1, 2001.

Cross References — Department of Human Services, generally, see § 43-1-1.

State training institutions, see § 43-27-29.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Disposition orders in child in need of supervision proceedings, see Unif. R. Youth Ct. Prac. Rule 27.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Upon finding that children are in need of supervision, the Youth Court is vested by law with broad dispositional discretion, to be exercised in the best interest of the children, and the placement of children in a church operated children's home was within the court's authority. In re M.R.L., 488 So. 2d 788 (Miss. 1986).

2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

Where father of thirteen year old child of divorced parents admittedly was unable or unwilling to control child and child would not stay with or obey her mother whom child thought had abandoned her when she was small, commitment of child to state industrial and training school until further orders of the court held proper. Mahaffey v. Mahaffey, 176 Miss. 733, 170 So. 289 (1936).

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 102 (judgment or decree — adjudging minor a neglected and dependent child — ordering change of custody); Form 106 (order — to show cause why custody of children should not be given to public agency); Form 108 (order — committing minor to state training school — finding of delinquency); Form 110 (order — placing minor in private home — requirement that cost of support be paid by parent or guardian); Form 111 (order — authorizing public officer or agency to place neglected children in suitable homes); Form 113 (order — awarding temporary custody of minor child to welfare unit — finding that child is dependent and neglected); Form 116 (order — terminating court's supervision of minor); Forms 118, 119 (mittimus or warrant — commitment of minor child to correctional institution); Forms 131-136 (probation).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-609. Dispositional alternatives in neglect and abuse cases.

In neglect and abuse cases, the disposition order may include any of the following alternatives, giving precedence in the following sequence:

(a) Release the child without further action;

(b) Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe. If the court finds that temporary relative placement, adoption or foster care placement is inappropriate, unavailable or otherwise not in the best interest of the child, durable legal custody may be granted by the court to any person subject to any limitations and conditions the court may prescribe; such durable legal custody will not take effect unless the child or children have been in the physical custody of the proposed durable custodians for at least one (1) year under the supervision of the Department of Human Services. The requirements of Section 43-21-613 as to disposition review hearings does not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities;

(c) Order terms of treatment calculated to assist the child and the child's parent, guardian or custodian which are within the ability of the parent, guardian or custodian to perform;

(d) Order youth court personnel, the Department of Human Services or child care agencies to assist the child and the child's parent, guardian or custodian to secure social or medical services to provide proper supervision and care of the child;

(e) Give legal custody of the child to any of the following but in no event to any state training school:

(i) The Department of Human Services for appropriate placement; or

(ii) Any private or public organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. Prior to assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child;

(f) If the court makes a finding that custody is necessary as defined in Section 43-21-301(3)(b), and that the child, in the action pending before the youth court had not previously been taken into custody, the disposition order shall recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:

(i) That reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his or her removal, and there is no reasonable alternative to custody; or

(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his or her own home, and there is no reasonable alternative to custody; or

(iii) If the court makes a finding in accordance with (ii) of this paragraph, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.

(g) If the court had, before the disposition hearing in the action pending before the court, taken the child into custody, the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Human Services to finalize the child's permanency plan that was in effect on the date of the disposition hearing.

SOURCES: Laws, 1979, ch. 506, § 68; Laws, 1980, ch. 550, § 25; Laws, 1998, ch. 516, § 7; Laws, 1999, ch. 569, § 3; Laws, 2004, ch. 417, § 3, eff from and after July 1, 2004.

Cross References — Department of Human Services, generally, see § 43-1-1.
State training institutions, see § 43-27-29.
Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.
Disposition orders in child protection proceedings, see Unif. R. Youth Ct. Prac. R. 27.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Durable legal custody.
3.-4. [Reserved for future use].
5. Miscellaneous.

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Where the mother's children were removed from her home after her husband was charged with raping their 11-year-old daughter, the trial court did not err in refusing durable legal custody and terminating her parental rights. The mother did not qualify for durable legal custody, because she had not had custody of her children for at least one year prior to the proceeding. May v. Harrison County Dep't of Human Servs., 883 So. 2d 74 (Miss. 2004).

Trial court erred in granting a father's motion for modification of child custody pursuant to Miss. Code Ann. § 93-5-23; the trial court placed too much emphasis on the natural parent presumption, and it was in the best interests of the children that they remain with a foster mother who had been granted durable legal custody under Miss. Code Ann. § 43-21-609. Barnett v. Oathout, — So. 2d —, 2003 Miss. LEXIS 583 (Miss. Oct. 30, 2003), opinion withdrawn by, substituted opinion at 883 So. 2d 563, 2004 Miss. LEXIS 1227 (Miss. 2004).

Youth court did not err in ordering that it was in the best interest of the child to grant durable legal custody to the foster parents, based on the child's situation of chronic abuse and long-term physical placement with the same foster family, but the youth court erred in relieving the Mississippi Department of Human Services in the case, as the intent of durable legal custody was merely to avoid the required annual dispositional reviews, not a complete preclusion of further involvement. In re S.A.M., 826 So. 2d 1266 (Miss. 2002).

While preference in custody matters was first given to parents, then relatives, and lastly to other people or agencies, relatives did not always have a preferential right to custody, especially where, as in the instant case, the infant or her brother incurred unexplained injuries consistent with those found in cases involving child abuse when with the parents or relatives, and, thus, the best interests of the infant did not involve placing her with those people. In re E.M., 810 So. 2d 596 (Miss. 2002).

The evidence was insufficient to support the youth court's action of dissolving a no-contact order previously issued by the circuit court to prohibit a criminal defendant from being alone with his stepdaughter, who was the victim of a gratification of lust charge to which the defendant pled guilty, where the circuit court order remained intact, no evidence or strategy was presented to assure the court that the step-daughter would not be alone and unsupervised while in the defendant's presence, and there was conflicting testimony as to whether the defendant received adequate treatment for sexual abuse as required by the circuit court order. Loggans v. Hall, 652 So. 2d 184 (Miss. 1995).

The evidence was insufficient to support a finding that a deaf child was "educationally neglected" within the meaning of the Youth Court Act (§§ 43-21-101 et seq.) where the child was enrolled in the best public school situation available to her in her local community, and therefore the court erred in ruling that the child should be removed from her home and placed in the Mississippi School for the Deaf; a court cannot remove a child from her home and family simply because a more desirable setting is available elsewhere, as the court must first find a failure of the child's environment and then take steps to protect the child's interests. In re C.R., 604 So. 2d 1079 (Miss. 1992).

Under § 43-21-609, which provides that in neglect and abuse cases a child may be placed in the custody of "his parents, a relative or other person," a non-relative may be considered equally with a relative in determining custody. Prante v. Beggiani, 519 So. 2d 1208 (Miss. 1988).

Despite the fact the record indicated that there was a substantial compliance with requirements of the trial court, the trial court properly directed that proceedings to terminate parental rights be instituted, where from all the evidence the court was apparently was of the opinion that the best interest of the child required the institution of such proceedings. In re T.T., 427 So. 2d 1382 (Miss. 1983).

2. Durable legal custody.

Although a youth court did not use the specific language "durable legal custody" in its permanency order, it could be inferred from the court's order that it did so and that it was in the child's best interest to grant a great-aunt durable legal custody. Smith v. Coahoma County Dep't of Human Servs. (in the I nterest of Joey), — So. 3d —, 2014 Miss. App. LEXIS 596 (Miss. Ct. App. Oct. 21, 2014).

Durable legal custody was not a mandatory option for the youth court and ultimately the paramount concern in determining proper disposition continued to be the best interest of the child, not reunification of the family; thus, the youth court did not err by not considering alternatives to termination of parental rights, specifically, durable legal custody under Miss. Code Ann. § 43-21-609. B.S.G. v. J.E.H., 958 So. 2d 259 (Miss. Ct. App. 2007).

Fact that under durable legal custody the parent retains some form of residual rights and responsibilities is a vital and obvious distinction to termination of parental rights. Another distinction is that a decision to grant durable legal custody is not permanent and is, therefore, subject to further review and modification by the courts. May v. Harrison County Dep't of Human Servs., 883 So. 2d 74 (Miss. 2004).

Durable legal custody was enacted by the Legislature to serve as an alternative to termination of parental rights. May v. Harrison County Dep't of Human Servs., 883 So. 2d 74 (Miss. 2004).

3.-4. [Reserved for future use].

5. Miscellaneous.

In a case in which a mother appealed a youth court's adjudication that she had neglected her two minor children and had placed the children in the legal custody of the Department of Human Services (DHS), the facts supported the youth court's finding that, at minimum, the children were not being provided the proper and necessary care or support or other care necessary for their well-being. The youth court was presented with conflicting testimony about the mother's care and support for her children, and based on the mother's alarming actions and statements that she would turn the children over to DHS, it could not be concluded with confidence that the youth court judge's decision was manifestly wrong. S. v. State, 47 So. 3d 715 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 606 (Miss. 2010).

II. Under Former Law.

6. In general.

A decree of the chancery court, affirming a youth court order, which adjudged an infant to be a neglected and battered child, which withdrew the custody of the child from both of its parents and awarded custody to the county welfare department must be reversed as to the child's father who was absent from the United States at the time the alleged neglect and battery took place and who had consistently provided for the support of his wife and child during his absence; and the child's custody should be awarded to its father. Lee v. State, 210 So. 2d 878 (Miss. 1968).

This section [Code 1942, § 7185-09] does not authorize the commitment of neglected children to a state training school. In re Slay, 245 Miss. 294, 147 So. 2d 299 (1962).

RESEARCH REFERENCES

ALR. Construction and application by state courts of the Federal Adoption and Safe Families Act and its implementing state statutes. 10 A.L.R.6th 173.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 102 (judgment or decree — adjudging minor a neglected and dependent child — ordering change of custody); Form 106 (order — to show cause why custody of children should not be given to public agency); Form 108 (order — committing minor to state training school — finding of delinquency); Form 110 (order — placing minor in private home — requirement that cost of support be paid by parent or guardian); Form 111 (order — authorizing public officer or agency to place neglected children in suitable homes); Form 113 (order — awarding temporary custody of minor child to welfare unit — finding that child is dependent and neglected); Form 116 (order — terminating court's supervision of minor); Forms 118, 119 (mittimus or warrant — commitment of minor child to correctional institution); Forms 131-136 (probation).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

3 Am. Jur. Proof of Facts 2d, Child Neglect, §§ 25 et seq. (proof of physical neglect — malnutrition and lack of adequate clothing); §§ 44 et seq. (proof of emotional neglect — child's emotional well-being endangered by parent's disturbed condition); §§ 72 et seq. (proof of medical neglect — parent's refusal to consent to blood transfusion during surgery for alleviation of facial disfigurement).

§ 43-21-611. Dispositional alternatives for children in need of special care.

If the youth court finds at the disposition hearing that a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child is also a child in need of special care, the youth court may, in its discretion, make any appropriate additional disposition designed for the treatment of the disability or infirmity, which may include civil commitment to a state institution providing care for that disability or infirmity. Any commitment, including one to a Department of Mental Health facility, ordered pursuant to this section shall be in compliance with the requirements for civil commitment as set forth in Section 41-21-61 et seq. Discharge from a Department of Mental Health facility shall be made pursuant to the provisions of Section 41-21-87. Nothing contained in this section shall require any state institution, department or agency to provide any service, treatment or facility if said service, treatment or facility is not available, nor shall this section be construed to authorize the youth court to overrule an expulsion or suspension decision of appropriate school authorities.

SOURCES: Laws, 1979, ch. 506, § 73; Laws, 1980, ch. 550, § 26; Laws, 1985, ch. 486, § 3; Laws, 1992, ch. 322 § 1, eff from and after passage (approved April 20, 1992).

Cross References — Commitment proceedings generally, see § 41-21-63.
Requirements for outpatient commitments, see § 41-21-74.
State training institutions, see § 43-27-29.
Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

ATTORNEY GENERAL OPINIONS

Under Section 43-21-611, the youth court would have original jurisdiction over commitment of a mentally ill juvenile only where that juvenile is already in youth court jurisdiction as abused, neglected, delinquent, in need of supervision or dependent. Jurisdiction over commitment proceedings for adults and for all other juveniles would be in chancery court pursuant to Section 41-21-63. Floyd, March 29, 1996, A.G. Op. #96-0148.

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 102 (judgment or decree — adjudging minor a neglected and dependent child — ordering change of custody); Form 106 (order — to show cause why custody of children should not be given to public agency); Form 108 (order — committing minor to state training school — finding of delinquency); Form 110 (order — placing minor in private home — requirement that cost of support be paid by parent or guardian); Form 111 (order — authorizing public officer or agency to place neglected children in suitable homes); Form 113 (order — awarding temporary custody of minor child to welfare unit — finding that child is dependent and neglected); Form 116 (order — terminating court's supervision of minor); Forms 118, 119 (mittimus or warrant — commitment of minor child to correctional institution); Forms 131-136 (probation).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-613. Modification of disposition orders, probation or parole.

(1) If the youth court finds, after a hearing which complies with the sections governing adjudicatory hearings, that the terms of a delinquency or child in need of supervision disposition order, probation or parole have been violated, the youth court may, in its discretion, revoke the original disposition and make any disposition which it could have originally ordered. The hearing shall be initiated by the filing of a petition that complies with the sections governing petitions in this chapter and that includes a statement of the youth court's original disposition order, probation or parole, the alleged violation of that order, probation or parole, and the facts which show the violation of that order, probation or parole. Summons shall be served in the same manner as summons for an adjudicatory hearing.

(2) On motion of a child or a child's parent, guardian or custodian, the youth court may, in its discretion, conduct an informal hearing to review the disposition order. If the youth court finds a material change of circumstances

relating to the disposition of the child, the youth court may modify the disposition order to any appropriate disposition of equal or greater precedence which the youth court could have originally ordered.

(3)(a) Unless the youth court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the youth court judge or referee at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public. For children who have been adjudicated abused or neglected, the youth court shall conduct a permanency hearing within twelve (12) months after the earlier of:

(i) An adjudication that the child has been abused or neglected; or

(ii) The date of the child's removal from the allegedly abusive or neglectful custodian/parent. Notice of such hearing shall be given in accordance with the provisions of Section 43-21-505(5). In conducting the hearing, the judge or referee shall require a written report and may require information or statements from the child's youth court counselor, parent, guardian or custodian, which includes, but is not limited to, an evaluation of the child's progress and recommendations for further supervision or treatment. The judge or referee shall, at the permanency hearing determine the future status of the child, including, but not limited to, whether the child should be returned to the parent(s) or placed with suitable relatives, placed for adoption, placed for the purpose of establishing durable legal custody or should, because of the child's special needs or circumstances, be continued in foster care on a permanent or long-term basis. If the child is in an out-of-state placement, the hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child. At the permanency hearing the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Human Services to finalize the child's permanency plan that was in effect on the date of the permanency hearing. The judge or referee may find that reasonable efforts to maintain the child within his home shall not be required in accordance with Section 43-21-603(7)(c), and that the youth court shall continue to conduct permanency hearings for a child who has been adjudicated abused or neglected, at least annually thereafter, for as long as the child remains in the custody of the Mississippi Department of Human Services.

(b) The court may find that the filing of a termination of parental rights petition is not in the child's best interest if:

(i) The child is being cared for by a relative; and/or

(ii) The Department of Human Services has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.

(c) The provisions of this subsection shall also apply to review of cases involving a dependent child; however, such reviews shall take place not less frequently than once each one hundred eighty (180) days. A dependent child shall be ordered by the youth court judge or referee to be returned to the custody and home of the child's parent, guardian or custodian unless the judge or referee, upon such review, makes a written finding that the return of the child to the home would be contrary to the child's best interests.

(d) Reviews are not to be conducted unless explicitly ordered by the youth court concerning those cases in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities, and relieved of physical and legal custody and supervision of the child.

SOURCES: Laws, 1979, ch. 506, § 69; Laws, 1980, ch. 550, § 27; Laws, 1985, ch. 486, § 8; Laws, 1996, ch. 409, § 1; Laws, 1997, ch. 440, § 14; Laws, 1998, ch. 516, § 8; Laws, 1999, ch. 569, § 4; Laws, 2002, ch. 342, § 1; Laws, 2003, ch. 450, § 1; Laws, 2004, ch. 417, § 4, eff from and after July 1, 2004.

Cross References — Notice requirements for review of dispositional order, see § 43-21-505.

Petitions, see §§ 43-21-451 et seq.

Adjudicatory hearings, see §§ 43-21-551 et seq.

Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Modification of disposition orders/annual reviews, see Unif. R. Youth Ct. Prac. Rule 28.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Evidence.
3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Youth court was without jurisdiction to modify its previous order, as it did not conduct a hearing in compliance with the laws governing adjudicatory hearings or the laws governing modification of youth court orders; no petition was filed, and no copy of the original disposition order was in the record. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

Procedure used by the youth court to charge a father for a juvenile's confinement fell drastically short of the basic procedures that guaranteed that a parent's due process rights were observed because the father was not notified that he could be charged for the juvenile's detention, and he was not old the cost, or given the opportunity to object to the charge. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

Youth court erred in ordering a juvenile's parents to pay for the cost of his confinement in juvenile detention because it failed to follow the procedures put in place to determine delinquency; the youth court did not articulate the proper burden of proof necessary for its judgment, and under the Youth Court Law, it was without authority and jurisdiction to sentence the juvenile to a detention facility when no petition had been filed against him and when he was not adjudicated delinquent. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

Contrary to a foster mother's claims, in changing custody from her to the children's natural father, the trial court did not rely on the natural parent presumption, but imposed the burden on the father to show a material change in circumstances, which was the appropriate standard. Barnett v. Oathout, 883 So. 2d 563 (Miss. 2004).

Youth court did not err in ordering that it was in the best interest of the child to grant durable legal custody to the foster parents, based on the child's situation of chronic abuse and long-term physical placement with the same foster family, but the youth court erred in relieving the Mississippi Department of Human Services in the case, as the intent of durable legal custody was merely to avoid the required annual dispositional reviews, not a complete preclusion of further involvement. In re S.A.M., 826 So. 2d 1266 (Miss. 2002).

In a hearing on a mother's petition to restore custody of her 2 children, who had been adjudicated neglected and placed in foster care, the applicable standard for the chancellor's consideration was whether there was "a material change in circumstances as to custody that would benefit and be for the best interest of the children"; the focus does not change in custody matters where it is not one parent vying against the other for custody of their child, but rather, the Department of Human Services seeking to retain custody of a neglected or abused child rather than have the child returned to a parent. Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

In a proceeding to determine custody of 2 children who had been adjudicated neglected and placed in foster care, the chancellor erred by deciding to return custody of the children to their natural mother, even though she had substantially complied with the requirements in the "service agreement" submitted to her by the Department of Human Services, where almost nothing had changed about the mother's situation or her attitude toward caring for her children since she lost custody, and the children were afraid of her and did not want to return to her home. Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

2. Evidence.

Trial court properly granted a natural father's petition for custody modification, as the children's foster mother's unjustified refusal to allow the father visitation or telephone contact was a material change in circumstances adverse to the children. Barnett v. Oathout, 883 So. 2d 563 (Miss. 2004).

The lower court could have bypassed the "reasonable efforts" to reunite the children with the parents and could have expedited the matter as a preference case for termination of parental rights where both parents refused to acknowledge the father's sexual abuse of the children at issue, the father failed to obtain counseling though the court-ordered program, and the mother failed to establish her own home independent of the father and work with the department of human services for the return of the children. S.R.B.R. v. Harrison County Dep't of Human Servs., 798 So. 2d 437 (Miss. 2001).

Sections 43-21-603 and 43-21-613 clearly contemplate that strict adherence to the rules of evidence will not be required, and "concerns over hearsay evidence and the like are basically dismissed." Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

Under § 43-21-613(3), testimony regarding a child's progress from those best able to comment is encouraged; thus, in a hearing on a mother's petition to restore custody of her 2 children, who had previously been adjudicated neglected and placed in foster care, the testimony of the social workers assigned to their cases should have been allowed. Copiah County Dep't of Human Servs. v. Linda D., 658 So. 2d 1378 (Miss. 1995).

3.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

The youth court's jurisdiction of youth adjudged to be delinquent is a continuing one, with a continuing power to alter the terms of probation if, in the interests of the child, the original arrangement proves inadequate or ill advised, since without such flexibility the court would no longer be in an advantageous position to give a delinquent youth "another chance" as an initial measure, at least, by granting probation upon terms of the least possible restraint and mild supervision. McLeod v. Boone, 232 So. 2d 733 (Miss. 1970).

At a minor's probation revocation hearing, the fact that the acts of misconduct charged to the minor did not violate any express condition of his probation did not mean that the youth court was without power to revoke probation or to change its conditions, in view of the fact that it was shown that the minor, during his probation, had been taken into custody on numerous occasions by law officers in connection with various acts of misconduct, which included "car prowling", shoplifting, incidents of assault and battery, and creating a public disturbance, it being an implicit condition of every order of probation that the probationer refrain from engaging in any criminal activity. McLeod v. Boone, 232 So. 2d 733 (Miss. 1970).

RESEARCH REFERENCES

ALR. Availability of discovery at probation revocation hearings. 52 A.L.R.5th 559.

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 115 (order — revoking commitment).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-615. Costs of conveying and treatment.

(1) The costs of conveying any child committed to any institution or agency shall be paid by the county or municipality from which the child is committed out of the general treasury of the county or municipality upon approval of the court. No compensation shall be allowed beyond the actual and necessary expenses of the child and the person actually conveying the child. In the case of a female child, the youth court shall designate some suitable woman to accompany her to the institution or agency.

(2) Whenever a child is adjudicated delinquent and committed by the youth court to the custody of any person or agency other than the custody of a state training school, the youth court, after giving the responsible parent or guardian a reasonable opportunity to be heard, may order that the parent or guardian pay, upon such terms or conditions as the youth court may direct, such sum or sums as will cover, in whole or in part, the support of the child including any necessary medical treatment. The parent shall be provided an itemized bill of all costs and shall be given an opportunity to request an adjustment of the costs. If the parent or guardian shall willfully fail or refuse to pay such sum, he may be proceeded against for contempt of court as provided in this chapter.

SOURCES: Laws, 1979, ch. 506, § 71; Laws, 2013, ch. 552, § 1, eff from and after July 1, 2013.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Transportation costs, see Unif. R. Youth Ct. Prac. Rule 27.

JUDICIAL DECISIONS

1. In general.

Procedure used by the youth court to charge a father for a juvenile's confinement fell drastically short of the basic procedures that guaranteed that a parent's due process rights were observed because the father was not notified that he could be charged for the juvenile's detention, and he was not old the cost, or given the opportunity to object to the charge. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

Youth court's assessment of costs against a juvenile's parents violated their rights to due process of law because the juvenile was never adjudicated delinquent; the parents could not be required to bear the costs of the juvenile's invalid detention because the juvenile was never proven delinquent beyond a reasonable doubt. J.P. v. State, — So. 3d —, 2014 Miss. LEXIS 561 (Miss. Nov. 13, 2014).

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 110 (order — placing minor in private home — requirement that cost of support be paid by parent or guardian).

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

§ 43-21-617. Protective orders.

In all cases where the child is found to be a delinquent child, a child in need of supervision, a neglected child or an abused child, the parent, guardian, custodian or any other person who, by any act or acts of wilful commission or omission, if found after notice and a hearing by the youth court to be encouraging, causing or contributing to the neglect or delinquency of such child, may be required by the youth court to do or to omit to do any act or acts that the judge may deem reasonable and necessary for the welfare of the child.

SOURCES: Laws, 1979, ch. 506, § 72, eff from and after July 1, 1979.

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

Child protection proceeding, see Unif. R. Youth Ct. Prac. Rule 27.

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 69 et seq.

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

2 Am. Jur. Proof of Facts 2d, Child Abuse; The Battered Child Syndrome, §§ 35 et seq. (proof of physical abuse in juvenile or family court proceeding).

3 Am. Jur. Proof of Facts 2d, Child Neglect, §§ 25 et seq. (proof of physical neglect — malnutrition and lack of adequate clothing); §§ 44 et seq. (proof of emotional neglect — child's emotional well-being endangered by parent's disturbed condition); §§ 72 et seq. (proof of medical neglect — parent's refusal to consent to blood transfusion during surgery for alleviation of facial disfigurement).

CJS. 43 C.J.S., Infants §§ 198, 199.

§ 43-21-619. Power to order parents to pay child's expenses and restitution or to participate in counseling or family treatment program; orders to constitute civil judgment.

(1) The youth court may order financially able parents to pay for court ordered medical and other examinations and treatment of a child; for reasonable attorney's fees and court costs; and for other expenses found necessary or appropriate in the best interest of the child as determined by the youth court. The youth court is authorized to enforce payments ordered under this subsection.

(2) The youth court may order the parents, guardians or custodians who exercise parental custody and control of a child who is under the jurisdiction of the youth court and who has willfully or maliciously caused personal injury or damaged or destroyed property, to pay such damages or restitution through the court to the victim in an amount not to exceed the actual loss and to enforce payment thereof. Restitution ordered by the youth court under this section shall not preclude recovery of damages by the victim from such child or parent, guardian or custodian or other person who would otherwise be liable. The youth court also may order the parents, guardians or custodians of a child who is under the jurisdiction of the youth court and who willfully or maliciously has caused personal injury or damaged or destroyed property to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences of malicious destruction of property or personal injury.

(3) Such orders under this section shall constitute a civil judgment and may be enrolled on the judgment rolls in the office of the circuit clerk of the county where such order was entered, and further, such order may be enforced in any manner provided by law for civil judgments.

SOURCES: Laws, 1989, ch. 441, § 4; Laws, 1993, ch. 560, § 4, eff from and after July 1, 1993.

JUDICIAL DECISIONS

1. In general.

This section is applicable only to the youth court and does not provide a private cause of action. Williamson v. Daniels, 748 So. 2d 754 (Miss. 1999).

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Alimony or child-support awards as subject to attorneys' fees. 49 A.L.R.5th 595.

Excessiveness or adequacy of damages awarded for injuries to nerves or nervous system. 51 A.L.R.5th 467.

Excessiveness or adequacy of damages awarded for injuries causing mental or psychological damages. 52 A.L.R.5th 1.

Apportionment of liability between

landowners and assailants for injuries to crime victims. 54 A.L.R.5th 379.

§ 43-21-621. Power to order public school to enroll child; placement in alternative school program; school-related conditions of probation; notification of principal.

(1) The youth court may, in compliance with the laws governing education of children, order any state-supported public school in its jurisdiction after notice and hearing to enroll or reenroll any compulsory-school-age child in school, and further order appropriate educational services. Provided, however, that the youth court shall not order the enrollment or reenrollment of a student that has been suspended or expelled by a public school pursuant to Section 37-9-71 or 37-7-301 for possession of a weapon on school grounds, for an offense involving a threat to the safety of other persons or for the commission of a violent act. For the purpose of this section "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another. The superintendent of the school district to which such child is ordered may, in his discretion, assign such child to the alternative school program of such school established pursuant to Section 37-13-92, Mississippi Code of 1972. The court shall have jurisdiction to enforce school and education laws. Nothing in this section shall be construed to affect the attendance of a child in a legitimate home instruction program.

(2) The youth court may specify the following conditions of probation related to any juvenile ordered to enroll or reenroll in school: That the juvenile maintain passing grades in up to four (4) courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades.

(3) If the adjudication of delinquency was for an offense involving a threat to the safety of the juvenile or others and school attendance is a condition of probation, the youth court judge shall make a finding that the principal of the juvenile's school should be notified. If the judge orders that the principal be notified, the youth court counselor shall within five (5) days or before the juvenile begins to attend school, whichever occurs first, notify the principal of the juvenile's school in writing of the nature of the offense and the probation requirements related to school attendance. A principal notified by a juvenile court counselor shall handle the report according to the guidelines and rules adopted by the State Board of Education.

(4) The Administrative Office of the Courts shall report to the Legislature on the number of juveniles reported to principals in accordance with this section no later than January 1, 1996.

SOURCES: Laws, 1989, ch. 441, § 5; Laws, 1993, ch. 543, § 2; Laws, 1994, ch. 607, § 7, eff from and after July 2, 1994.

JUDICIAL DECISIONS

1. In general.
2. Reenrollment.

1. In general.

Mississippi Supreme Court intends to make clear that, should evidence indicate that a sexual assault or attempted sexual assault occurred, it is, without question, a violent act; thus, a youth court acted outside of its authority when it ordered the reenrollment of two students who had been expelled from school based on evidence presented to the expelling school board that they had been involved in the sexual assault of a female student on a school campus. Lauderdale County Sch. Bd. v. Brown, 106 So. 3d 807 (Miss. 2013).

While Miss. Code Ann. § 43-21-621(1) empowers a youth court to order a state-supported public school within its jurisdiction to enroll or reenroll any compulsory-school-age child in school, the statute does not grant to the youth court the power to designate the specific school in which the child is to be enrolled. R.D.W. v. Natchez-Adams Sch. Dist., 987 So. 2d 1038 (Miss. Ct. App. 2008).

Issue of a minor child's school placement was moot and a youth court lacked jurisdiction to order the child's transfer to a high school from an alternative school, under Miss. Code Ann. § 43-21-621(1), because the child was assigned to the alternative school and was attending that school at the time he filed his motion in the youth court, seeking placement in the high school. R.D.W. v. Natchez-Adams Sch. Dist., 987 So. 2d 1038 (Miss. Ct. App. 2008).

Youth court had jurisdiction to order reenrollment of student suspended for violation of school district's alcohol policy. Board of Trustees v. T.H. ex rel. T.H., 681 So. 2d 110 (Miss. 1996).

2. Reenrollment.

Youth court erred in ordering the reenrollment of two students that a school board had expelled for a one year time period because both students had attained the age of 17 before the calendar year. Lauderdale County Sch. Bd. v. Brown, 106 So. 3d 807 (Miss. 2013).

§ 43-21-623. Testing of juvenile delinquents under the jurisdiction of the youth court for HIV and AIDS.

Any juvenile who is adjudicated a delinquent on or after July 1, 1994, as a result of committing a sex offense as defined in Section 45-33-23 or any offense involving the crime of rape and placed in the custody of the Mississippi Department of Human Services, Office of Youth Services, shall be tested for HIV and AIDS. Such tests shall be conducted by the State Department of Health in conjunction with the Office of Youth Services, Mississippi Department of Human Services at the request of the victim or the victim's parents or guardian if the victim is a juvenile. The results of any positive HIV or AIDS tests shall be reported to the victim or the victim's parents or guardian if the victim is a juvenile as well as to the adjudicated offender. The State Department of Health shall provide counseling and referral to appropriate treatment for victims of a sex offense when the adjudicated offender tested positive for HIV or AIDS if the victim so requests.

SOURCES: Laws, 1994, ch. 504, § 2; Laws, 2000, ch. 499, § 28, eff from and after July 1, 2000.

Cross References — Department of Human Services wilderness training program for first time youth offenders, see § 43-21-625.

Mississippi Sex Offenders Registration Law, see §§ 45-33-21 et seq.

RESEARCH REFERENCES

ALR. Damage action for HIV testing without consent of person tested. 77 A.L.R.5th 541.

Validity and Propriety under Circumstances, of Court-Ordered HIV Testing. 87 A.L.R.5th 631.

§ 43-21-625. Wilderness training program for certain juvenile offenders.

(1) The Department of Human Services shall develop and implement a wilderness training program for first time youth offenders sentenced or classified as delinquency cases or as children in need of supervision.

(2) The program shall include supervised camping trips, calisthenics, manual labor assignments, physical training with obstacle courses, training in decision-making and personal development and drug counseling and rehabilitation programs.

(3) The department shall adopt rules requiring that wilderness training participants complete a structured disciplinary program and allowing for a restriction on general inmate population privileges.

(4) Upon receipt of youth offenders, the department shall screen offenders for the wilderness training program. To participate, an offender must have no physical limitations which would preclude participation in strenuous activity, must not be impaired and must not have been previously incarcerated in a state or federal correctional facility. In screening offenders for the wilderness training program, the department shall consider the offender's criminal history and the possible rehabilitative benefits of the program. If an offender meets the specified criteria and space is available, the department shall request in writing from the sentencing court, approval to participate in the wilderness training program. If the person is classified by the court as a delinquent or child in need of supervision and the department is requesting approval from the sentencing court for placement in the program, the department shall, at the same time, notify the prosecuting attorney that the offender is being considered for placement in the wilderness training program. The notice shall explain that the purpose of such placement is diversion from lengthy incarceration when a wilderness training program could produce the same deterrent effect, and that the person given notice may, within fourteen (14) days of the mailing of the notice, notify the sentencing court in writing of objections, if any, to the placement of the offender in the wilderness training program. The sentencing court shall notify the department in writing of placement approval no later than twenty-one (21) days after receipt of the department's request for placement of the youthful offender in the wilderness training program. Failure to notify the department within twenty-one (21) days shall be considered an approval by the sentencing court for placing the youthful offender in the wilderness training program. The offices of the prosecuting attorneys may develop procedures for notifying each victim that the offender is being considered for placement in the wilderness training program.

(5) The program shall provide a period of rigorous training to offenders who require a greater degree of supervision than community control or probation provides. Wilderness training programs may be operated in secure areas in or adjacent to adult institutions or in any area approved by the department. The program is not intended to divert offenders away from probation or community control but to divert them from long periods of incarceration when a wilderness training program could produce the same deterrent effect.

(6) If an offender in the wilderness training program becomes unmanageable, the department may place him in an appropriate facility to complete the remainder of his sentence. Any period of time in which the offender is unable to participate in the wilderness training program activities may be excluded from the specified time requirements in the program. The portion of the sentence served prior to placement in the wilderness training program shall not be counted toward program completion. Upon the offender's completion of the wilderness training program, the department shall submit a report to the court that describes the offender's performance. If the offender's performance has been satisfactory, the court shall issue an order modifying the sentence imposed and placing the offender on probation. If the offender violates the conditions of probation, the court may revoke probation and impose any sentence which it might have originally imposed.

(7) The department shall provide a special training program for staff selected for the wilderness training program.

(8) The department is authorized to contract with any private or public nonprofit organization or entity to carry out the purpose of this section.

SOURCES: Laws, 1994, ch. 473, § 1, eff from and after July 1, 1994.

RESEARCH REFERENCES

ALR. Availability of discovery at probation revocation hearings. 52 A.L.R.5th 559.

§ 43-21-627. Alternative work program; qualified offenders; volunteers; supervision; removal from program.

Each youth court is authorized to establish a youth court work program as an alternative disposition for nonviolent offenders. The youth court work program shall be used only for first time nonviolent youth offenders. The court shall solicit and approve the assistance of volunteers from the area served by the youth court, including business and community volunteers. The court may require a nonviolent youth offender to work for a minimum of six (6) months with a court approved volunteer as part or all of a sentence imposed by the court. The volunteers shall provide a working environment as mentors to provide guidance and support and to teach the youth offender job skills. Each youth offender and volunteer shall be under the supervision of the court and shall make regular reports to the court as required by order of the court. If a youth offender violates the terms and conditions imposed by the court while participating in the youth court work program, the court is authorized to remove the offender from the program and impose any other disposition authorized by law.

SOURCES: Laws, 1998, ch. 407, § 1, eff from and after July 1, 1998.

APPEALS

SEC.
43-21-651. Appeals to Supreme Court.

§ 43-21-651. Appeals to Supreme Court.

(1) The court to which appeals may be taken from final orders or decrees of the youth court shall be the Supreme Court of Mississippi. In any case wherein an appeal is desired, written notice of intention to appeal shall be filed with the youth court clerk within the time, and costs in the youth court and the filing fee in the Supreme Court shall be paid, as is otherwise required for appeals to the Supreme Court. If the appellant shall make affidavit that he is unable to pay such costs and filing fee, he shall have an appeal without prepayment of court costs and filing fee. Only the initials of the child shall appear on the record on appeal.

(2) The pendency of an appeal shall not suspend the order or decree of the youth court regarding a child, nor shall it discharge the child from the custody of that court or of the person, institution or agency to whose care such child shall have been committed, unless the youth court or Supreme Court shall so order. If appellant desires to appeal with supersedeas, the matter first shall be presented to the youth court. If refused, the youth court shall forthwith issue a written order stating the reasons for the denial, which order shall be subject to review by the Supreme Court. If the Supreme Court does not dismiss the proceedings and discharge the child, it shall affirm or modify or reverse the order of the youth court and remand the child to the jurisdiction of the youth court for placement and supervision in accordance with its order, and thereafter the child shall be and remain under the jurisdiction of the youth court in the same manner as if the youth court had made the order without an appeal having been taken.

(3) Appeals from the youth court shall be preference cases in the Supreme Court.

SOURCES: Laws, 1979, ch. 506, § 74; Laws, 2013, ch. 359, § 1, eff from and after passage (approved March 18, 2013.)

Cross References — Proceedings pursuant to the Youth Court Law, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Finding that the juvenile was a delinquent child after having been charged with simple assault was proper where he was required to immediately appeal the decision of the trial court which refused his motion to appeal supersedeas to the Supreme Court before proceeding with his appeal on the merits, Miss. Code Ann. § 43-21-651(2); the Supreme Court could then have reviewed the order of the youth court and determined whether the judge had abused his discretion, but, since the juvenile failed to appeal, his claim on that issue was procedurally barred. In re G. L. H., 843 So. 2d 109 (Miss. Ct. App. 2003).

There was no evidence in the record of any appeal taken from the judgment of the youth court, much less any appeal taken within the requisite 10 days; as the father's proper method of seeking relief from the youth court's determination would have been to file an appeal with the appellate court within 10 days, the filing of an original circuit court complaint against the Department of Human Services a year and a half later was not the appropriate remedy for seeking relief. Little v. Miss. Dep't of Human Servs., 835 So. 2d 9 (Miss. 2002), writ of certiorari denied by 540 U.S. 878, 124 S. Ct. 296, 157 L. Ed. 2d 142, 2003 U.S. LEXIS 6253, 72 U.S.L.W. 3241 (2003).

Though separate hearings are required for the two phases of a youth court determination, they are both part of the same proceeding for an appeal, and there is no final appealable order in a delinquency proceeding until the youth court has entered its order of disposition. J.P.C. v. State (In the Interest of J.P.C.), 783 So. 2d 778 (Miss. Ct. App. 2000).

The youth court system does not unconstitutionally usurp jurisdiction committed exclusively to the chancery court by permitting the Supreme Court to hear a direct appeal without appeal to the chancery court, even though the Mississippi Constitution provides that the chancery court shall have full jurisdiction over "minor's business." Youth courts are neither superior, equal, or inferior to other "inferior" courts; they are special courts due to the special nature of their function. Thus, the legislature had authority to vest in the youth courts "exclusive original jurisdiction in all proceedings concerning ...an abused child," and the social imperative for prompt disposition of matters affecting children is sufficiently within the police power that the legislature may streamline the appellate process. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

In the youth court, as elsewhere, requests for continuance are addressed to the sound discretion of the court, except that in youth court more so than almost any other there is an imperative that the Court proceed with the matter as promptly as may fairly be done. The Supreme Court will not reverse the youth court in exercising its discretion in these cases unless the youth court abused its discretion and the Supreme Court is convinced that injustice would result therefrom. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

Section 9-13-33 [repealed] does not in any way limit its application such that appeals from the youth court would be outside its coverage. Thus, a court reporter was required to refund to a father any sums that the father had deposited or paid in excess of the fees allowable under § 9-13-33 [repealed] for a transcript of proceedings in the youth court in which his daughter had been adjudged an abused child. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

A person colorably claiming to be a natural parent, even if a non-custodial one, has standing to appeal an order of a youth court adjudging custody or other matters regarding his or her child. Several sections of the Youth Court Act recognize the parent or guardian of the child as a party to the proceedings by requiring that they be provided with notice; while these statutes do not grant a right of appeal, they do recognize the substantial interest a parent has in the outcome of the proceedings, whatever their nature-the continued custody of their child. Thus, a father had standing to appeal a youth court's order placing his child in the custody of her mother, even though the father was not and had never been married to the child's mother. In re T.L.C., 566 So. 2d 691 (Miss. 1990).

Where a statutory appeal is taken from a youth court, the statute is mandatory that nowhere on the records of the Supreme Court or the appellate records or briefs or other proceedings should the minor's name appear, only his or her initials; however, failure to submit the appellate record showing only initials is not reversible error. In re R.R.B., 394 So. 2d 907 (Miss. 1981).

2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

A juvenile was entitled to present evidence to the Supreme Court on appeal for its determination as to whether an attorney appointed by the youth court effectively aided the juvenile and whether the constitutional rights of the juvenile were violated, the trial judge not being the final judge as to such questions. Dependents of Roberts v. Holiday Parks, 221 So. 2d 92 (Miss. 1969).

Where the youth court has continuing, retained jurisdiction over the case of a minor, it is the proper tribunal to determine any factual issues as to the minor's rehabilitation occurring subsequent to its order committing him to a training school; which order was affirmed by the Supreme Court. In re Green, 203 So. 2d 470 (Miss. 1967), cert. denied, 392 U.S. 945, 88 S. Ct. 2297, 20 L. Ed. 2d 1407 (1968).

A youth court order finding a minor to be a delinquent child and that it would be for his best interest that he be placed in a training school is reviewable by the Supreme Court. In re Green, 203 So. 2d 470 (Miss. 1967), cert. denied, 392 U.S. 945, 88 S. Ct. 2297, 20 L. Ed. 2d 1407 (1968).

Where a minor and his parents contend they were denied their full right of appeal from a decision of a youth court in that no transcript of the testimony introduced there was provided them, the fact that they did not request the transcript, even assuming they were entitled to one, did not constitute a denial of their rights. In re Simpson, 199 So. 2d 833 (Miss. 1967).

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 126 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Juvenile Courts and Delinquent and Dependent Children, Form 141 (petition or application — for leave to appeal order taking minor child from custody of parents); Form 142 (petition or application — for leave to appeal order committing minor to training school as a delinquent); Form 150 (motion — to vacate and set aside order removing child from custody of parent — by mother — change of conditions); Form 151 (affidavit — in support of motion to vacate order declaring minor children dependent and neglected — by mother); Form 152 (order — denying mother's petition for return of minor child's custody — change of condition); Form 153 (order — granting application for rehearing).

14 Am. Jur. Trials 619, Juvenile Court Proceeding.

CJS. 43 C.J.S., Infants §§ 172-189.

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions Third Edition (Michie).

MISSISSIPPI COMMISSION ON A UNIFORM YOUTH COURT SYSTEM AND PROCEDURES

Sec.
43-21-701. Mississippi Commission on a Uniform Youth Court Systems and Procedures established.
43-21-703. Duties of Commission.

§ 43-21-701. Mississippi Commission on a Uniform Youth Court Systems and Procedures established.

(1) There is hereby established the Mississippi Commission on a Uniform Youth Court System and Procedures. The commission shall consist of the following nineteen (19) members:

(a) One (1) circuit court judge appointed by the Chief Justice of the Mississippi Supreme Court;

(b) One (1) chancery court judge, appointed by the Chief Justice of the Mississippi Supreme Court;

(c) The President of the Mississippi Council of Youth Court Judges, or his designee;

(d) Two (2) who may be either family court judges or county court judges, appointed by the President of the Mississippi Council of Youth Court Judges;

(e) Two (2) youth court referees, appointed by the President of the Mississippi Council of Youth Court Judges;

(f) One (1) member of the Mississippi House of Representatives to be appointed by the Speaker of the House;

(g) One (1) member of the Mississippi Senate to be appointed by the Lieutenant Governor;

(h) The directors of the following state agencies or their designated representatives: the Mississippi Department of Youth Services and the Mississippi Department of Public Welfare;

(i) The director or his designated representative of the Governor's Office of Federal-State Programs;

(j) One (1) employee, other than the director, of the Department of Public Welfare who is a supervisor of social workers primarily assigned to youth cases, appointed by the Governor;

(k) One (1) municipal police chief, appointed by the Governor;

(*l*) One (1) county sheriff, appointed by the Governor;

(m) Two (2) lawyers experienced in youth court work, appointed by the Governor; and

(n) Two (2) prosecuting attorneys who prosecute cases in youth court, appointed by the Governor.

(2) The members shall be appointed to the commission within fifteen (15) days of May 25, 1988, and shall serve until the end of their respective terms of office, if applicable, or until October 1, 1989, whichever occurs first. Vacancies on the commission shall be filled in the manner of the original appointment.

Members shall be eligible for reappointment provided that upon such reappointment they meet the qualifications required of a new appointee.

(3) The commission may elect any officers from among its membership as it deems necessary for the efficient discharge of the commission's duties.

(4) The commission shall adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business. Ten (10) or more members shall constitute a quorum for the purpose of conducting any business of the commission; provided, however, a vote of not less than twelve (12) members shall be required for any recommendations to the Legislature.

(5) Members of the commission shall serve without compensation, except that state and county employees and officers shall receive any per diem as authorized by law from appropriations available to their respective agencies or political subdivisions. All commission members shall be entitled to receive reimbursement for any actual and reasonable expenses incurred as a necessary incident to service on the commission, including mileage as provided by law.

(6) The commission may select and employ a research director who shall perform the duties which the commission directs, which duties shall include the hiring of such other employees for the commission as the commission may approve. The research director and all other employees of the commission shall be in the state service and their salaries shall be established by the commission subject to approval by the State Personnel Board. Employees of the commission shall be reimbursed for the expenses necessarily incurred in the performance of their official duties in the same manner as other state employees. The commission may also employ any consultants it deems necessary, including consultants to compile any demographic data needed to accomplish the duties of the commission.

(7) The Governor's Office of Federal-State Programs shall support the Commission on a Uniform Youth Court System and shall act as agent for any funds made available to the commission for its use. In order to expedite the implementation of the Commission on a Uniform Youth Court System, any funds available to the Governor's Office of Federal-State Programs for the 1988-1989 fiscal year may be expended for the purpose of defraying the expenses of the commission created herein.

(8) The commission may contract for suitable office space in accordance with the provisions of Section 29-5-2, Mississippi Code of 1972. In addition, the commission may utilize, with their consent, the services, equipment, personnel, information and resources of other state agencies; and may accept voluntary and uncompensated services, contract with individuals, public and private agencies, and request information, reports and data from any agency of the state, or any of its political subdivisions, to the extent authorized by law.

(9) In order to conduct and carry out its purposes, duties and related activities as provided for in this act, the commission is authorized to apply for and accept gifts, grants, subsidies and other funds from persons, corporations, foundations, the United States Government or other entities, provided that the

receipt of such gifts, grants, subsidies and funds shall be reported and otherwise accounted for in the manner provided by law.

SOURCES: Laws, 1988, ch. 601, § 1, eff from and after passage (approved May 25, 1988).

Editor's Note — Section 7-1-251 provides that wherever the term "Office of the Governor, Federal-State Programs" appears in any law the same shall mean the Department of Finance and Administration.

Section 43-1-1 provides that the term "State Department of Public Welfare" shall mean the Department of Human Services, and that the term "State Board of Public Welfare" shall mean the State Board of Human Services.

Section 43-27-2 provides that the term "Department of Youth Services" shall mean the Department of Human Services.

Laws of 1999, ch. 432, § 1, provides:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of Chapter 23, Family Courts, by Section 1 of Chapter 432, Laws of 1999.

§ 43-21-703. Duties of Commission.

(1) The commission shall study the youth court system in Mississippi, and prepare a report including any proposed changes in the youth court system and/or its procedures. It shall submit the report to the Legislature, on or before October 1, 1989, along with a report detailing any legislation which may be needed to implement the plan. In preparing the report, the commission shall evaluate the existing juvenile services in the state and may recommend changes in the organizational concepts, institutions, laws and resources.

(2) In formulating its report, the commission shall take into consideration the following:

(a) Whether a uniform statewide youth court system would be desirable;

(b) How best the service needs of the state could be met in relation to the taxing and resource capacity of various multi-county districts now existing or proposed;

(c) Whether counties in a given service area or district may develop district shelters, detention centers and diagnostic centers to serve a multi-county area; and

(d) What proposals or alternatives would update or modernize the system to provide staffing for all counties and citizens.

(3) The commission, in addition to recommending the plan described in this section, shall serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on the youth court system in Mississippi and shall conduct ongoing research relating to the improvement of the youth court system. Pursuant to its duties under this

subsection, the commission may request the regular submission to it of such reports, information and statistics by the courts, judges, prosecuting attorneys and agencies of this state which the commission deems necessary for the development of its reports.

SOURCES: Laws, 1988, ch. 601, § 2, eff from and after passage (approved May 25, 1988).

TEEN COURT PILOT PROGRAM ACT

SEC.
43-21-751. Short title.
43-21-753. Establishment; teen court program.
43-21-755. Instructional time.

§ 43-21-751. Short title.

This article shall be known as the "Teen Court Pilot Program Act."

SOURCES: Laws, 1996, ch. 514, § 1, eff from and after July 1, 1996.

§ 43-21-753. Establishment; teen court program.

The youth court of any county in the state may establish a teen court program for the diversion of certain offenders who have waived all right of confidentiality and privilege against self-incrimination. The youth court of Rankin County may extend its teen court program within the city limits of Pearl. The offenders eligible to participate shall be those offenders who in the discretion of the youth court are suitable and compulsory-school-age children who have come into the jurisdiction of the youth court as a result of not attending school. The teen court shall be a preventive program for juveniles comprised of youth who are not less than thirteen (13) nor more than seventeen (17) years of age, which students shall serve as prosecutor, defense counsel, bailiff, court clerk and jurors. The program is to administer the "sentencing" or disposition phase of the proceedings against offenders who elect to participate, shall be under the guidance of the local youth court, and shall be approved by the local youth court. The youth court judge, or his designee who is a licensed attorney, shall preside. The teen court is authorized to require eligible offenders who choose to go to teen court in lieu of youth court to perform up to one hundred twelve (112) hours of community service, require offenders to make a personal apology to a victim, require offenders to submit a research paper on any relevant subject, attend counseling and make restitution or any other disposition authorized by the youth court. The youth court shall establish rules and regulations, including sentencing guidelines, for the operation of a teen court. The teen court is authorized to accept monies from any available public or private source, including public or private donations, grants, gifts and appropriated funds for funding expenses of operating the court.

Teen court may be held at whatever location the youth court selects at whatever time or times. Eligible offenders shall be only those children who agree to participate in the teen court and to abide by the teen court's rulings, whose parents or legal guardian shall also so agree, and who are otherwise qualified to participate.

The youth court judge may require an offender who elects to participate in the teen court to pay a fee not to exceed Five Dollars ($5.00); any such fees shall be used in administering this article, and the fee shall not be refunded, regardless of whether the child successfully completes the teen court program.

SOURCES: Laws, 1996, ch. 514, § 2; Laws, 1997, ch. 547, § 1; Laws, 2003, ch. 423, § 1, eff from and after July 1, 2003.

§ 43-21-755. Instructional time.

Any school participating in the Teen Court Program established by this article shall be allowed to credit the time of teachers and students spent in participating in teen court as instructional time.

SOURCES: Laws, 1996, ch. 514, § 2, eff from and after July 1, 1996.

YOUTH COURT SUPPORT PROGRAM

SEC.	
43-21-801.	Youth Court Support Fund established; purpose; eligibility for funding; appropriation of funds; annual continuing juvenile justice education requirement.
43-21-803.	Tony Gobar Individualized Assessment and Comprehensive Community Intervention Initiative (IACCII) Program established; purposes; eligibility for grants; programs and services; application for assistance; Tony Gobar "IACCII" Fund created.

§ 43-21-801. Youth Court Support Fund established; purpose; eligibility for funding; appropriation of funds; annual continuing juvenile justice education requirement.

(1) There is established the Youth Court Support Program. The purpose of the program shall be to ensure that all youth courts have sufficient support funds to carry on the business of the youth court. The Administrative Office of Courts shall establish a formula consistent with this section for providing state support payable from the Youth Court Support Fund for the support of the youth courts.

(a)(i) Each regular youth court referee is eligible for youth court support funds so long as the senior chancellor does not elect to employ a youth court administrator as set forth in paragraph (b); a municipal youth court judge is also eligible. The Administrative Office of Courts shall direct any funds to the appropriate county or municipality. The funds shall be utilized to compensate an intake officer who shall be responsible for ensuring that all intake and case information for the Division of Youth

Services, truancy matters and the Division of Family and Children's Services is entered into the Mississippi Youth Court Information Delivery System (MYCIDS) in an accurate and timely manner. If the court already has an intake officer responsible for entering all cases of the Division of Youth Services, truancy matters and the Division of Family and Children's Services into MYCIDS, the regular youth court referee or municipal court judge may certify to the Administrative Office of Courts that such a person is already on staff. In such a case, each regular youth court referee or municipal youth court judge shall have the sole individual discretion to appropriate those funds as expense monies to assist in hiring secretarial staff and acquiring materials and equipment incidental to carrying on the business of the court within the private practice of law of the referee or judge, or may direct the use of those funds through the county or municipal budget for court support supplies or services. The regular youth court referee and municipal youth court judge shall be accountable for assuring through private, county or municipal employees the proper preparation and filing of all necessary tracking and other documentation attendant to the administration of the youth court.

(ii) Title to all tangible property, excepting stamps, stationery and minor expendable office supplies, procured with funds authorized by this section, shall be and forever remain in the county or municipality to be used by the judge or referee during the term of his office and thereafter by his successors.

(b)(i) When permitted by the Administrative Office of Courts and as funds are available, the senior chancellor for Chancery Districts One, Two, Three, Four, Six, Seven, Nine, Ten, Thirteen, Fourteen, Fifteen and Eighteen may appoint a youth court administrator for the district whose responsibility will be to perform all reporting, tracking and other duties of a court administrator for all youth courts in the district that are under the chancery court system. Any chancery district listed in this paragraph in which a chancellor appoints a referee or special master to hear any youth court matter is ineligible for funding under this paragraph (b). The Administrative Office of Courts may allocate to an eligible chancery district a sum not to exceed Thirty Thousand Dollars ($30,000.00) per year for the salary, fringe benefits and equipment of the youth court administrator, and an additional sum not to exceed One Thousand Nine Hundred Dollars ($1,900.00) for the administrator's travel expenses.

(ii) The appointment of a youth court administrator shall be evidenced by the entry of an order on the minutes of the court. The person appointed shall serve at the will and pleasure of the senior chancellor but shall be an employee of the Administrative Office of Courts.

(iii) The Administrative Office of Courts must approve the position, job description and salary before the position can be filled. The Administrative Office of Courts shall not approve any plan that does not first require the expenditure of the funds from the Youth Court Support Fund before expenditure of county funds is authorized for that purpose.

(iv) Title to any tangible property procured with funds authorized under this paragraph shall be and forever remain in the State of Mississippi.

(c)(i) Each county court is eligible for youth court support funds. The funds shall be utilized to provide compensation to an intake officer who shall be responsible for ensuring that all intake and case information for the Division of Youth Services, truancy matters and the Division of Family and Children's Services is entered into the Mississippi Youth Court Information Delivery System (MYCIDS) in an accurate and timely manner. If the county court already has an intake officer or other staff person responsible for entering all cases of the Division of Youth Services, truancy matters and the Division of Family and Children's Services into MYCIDS, the senior county court judge may certify that such a person is already on staff. In such a case, the senior county court judge shall have discretion to direct the expenditure of those funds in hiring other support staff to carry on the business of the court.

(ii) For the purposes of this paragraph, "support staff" means court administrators, law clerks, legal research assistants, secretaries, resource administrators or case managers appointed by a youth court judge, or any combination thereof, but shall not mean school attendance officers.

(iii) The appointment of support staff shall be evidenced by the entry of an order on the minutes of the court. The support staff so appointed shall serve at the will and pleasure of the senior county court judge but shall be an employee of the county.

(iv) The Administrative Office of Courts must approve the positions, job descriptions and salaries before the positions may be filled. The Administrative Office of Courts shall not approve any plan that does not first require the expenditure of funds from the Youth Court Support Fund before expenditure of county funds is authorized for that purpose.

(v) The Administrative Office of Courts may approve expenditure from the fund for additional equipment for support staff appointed pursuant to this paragraph if the additional expenditure falls within the formula. Title to any tangible property procured with funds authorized under this paragraph shall be and forever remain in the county to be used by the youth court and support staff.

(2)(a)(i) The formula developed by the Administrative Office of Courts for providing youth court support funds shall be devised so as to distribute appropriated funds proportional to caseload and other appropriate factors as set forth in regulations promulgated by the Administrative Office of Courts. The formula will determine a reasonable maximum amount per judge or referee per annum that will not be exceeded in allocating funds under this section.

(ii) The formula shall be reviewed by the Administrative Office of Courts every two (2) years to ensure that the youth court support funds provided herein are proportional to each youth court's caseload and other specified factors.

(iii) The Administrative Office of Courts shall have wide latitude in the first two-year cycle to implement a formula designed to maximize caseload data collection.

(b) Application to receive funds under this section shall be submitted in accordance with procedures established by the Administrative Office of Courts.

(c) Approval of the use of any of the youth court support funds distributed under this section shall be made by the Administrative Office of Courts in accordance with procedures established by the Administrative Office of Courts.

(3)(a) There is created in the State Treasury a special fund to be designated as the "Youth Court Support Fund," which shall consist of funds appropriated or otherwise made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be distributed to the youth courts by the Administrative Office of Courts for the purposes described in this section.

(b)(i) During the regular legislative session held in calendar year 2007, the Legislature may appropriate an amount not to exceed Two Million Five Hundred Thousand Dollars ($2,500.000.00) to the Youth Court Support Fund.

(ii) During each regular legislative session subsequent to the 2007 Regular Session, the Legislature shall appropriate Two Million Five Hundred Thousand Dollars ($2,500,000.00) to the Youth Court Support Fund.

(c) No youth court judge or youth court referee shall be eligible to receive funding from the Youth Court Support Fund who has not received annual continuing education in the field of juvenile justice in an amount to conform with the requirements of the Rules and Regulations for Mandatory Continuing Judicial Education promulgated by the Supreme Court. The Administrative Office of Courts shall maintain records of all referees and youth court judges regarding such training and shall not disburse funds to any county or municipality for the budget of a youth court judge or referee who is not in compliance with the judicial training requirements.

(4) Any recipient of funds from the Youth Court Support Fund shall not be eligible for continuing disbursement of funds if the recipient is not in compliance with the terms, conditions and reporting requirements set forth in the procedures promulgated by the Administrative Office of Courts.

SOURCES: Laws, 2006, ch. 539, § 7; Laws, 2007, ch. 557, § 1; Laws, 2015, ch. 418, § 4, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment, in (1)(a)(i), divided the former second sentence into the present second and fifth sentences by adding "In such a case" at the beginning of the fifth sentence, and added the third and fourth sentences; and in

(1)(c)(i), divided former paragraph (i) into the present first and last sentences by adding "In such cases" at the beginning of the last sentence, and therein inserted "other" preceding "support staff," and added the second and third sentences.

Cross References — Continuing judicial education for Mississippi judges, see M.C.J.E. Rules 1 through 8.

Administrative Office of Courts generally, see §§ 9-21-1 et seq.

§ 43-21-803. Tony Gobar Individualized Assessment and Comprehensive Community Intervention Initiative (IACCII) Program established; purposes; eligibility for grants; programs and services; application for assistance; Tony Gobar "IACCII" Fund created.

(1) There is established the Tony Gobar Individualized Assessment and Comprehensive Community Intervention Initiative (IACCII) Program for the purposes of:

(a)(i) Providing comprehensive strength-based needs assessments, individualized treatment plans and community-based services for certain youth who would otherwise be committed to the training schools. The IACCII ensures that youth and their families can access necessary services available in their home communities; and

(ii) Providing grants to faith-based organizations and nonprofit 501(c)(3) organizations that develop and operate community-based alternatives to the training schools and detention centers. In order to be eligible for a grant under this paragraph, a faith-based or nonprofit 501(c)(3) organization in cooperation with a youth court must develop and operate a juvenile justice alternative sanction designed for delinquent youths. The program must be designed to decrease reliance on commitment in juvenile detention facilities and training schools.

(b) Programs established pursuant to this subsection must not duplicate existing programs or services and must incorporate best practices principles and positive behavioral interventions. The Department of Human Services shall have sole authority and power to determine the programs to be funded pursuant to this section.

(2) A faith-based or nonprofit 501(c)(3) must submit an application to the Department of Human Services. The application must include a description of the purpose for which assistance is requested, the amount of assistance requested and any other information required by the Department of Human Services.

(3) The Department of Human Services shall have all powers necessary to implement and administer the program established under this section, and the department shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this section.

(4)(a) There is created in the State Treasury a special fund to be designated as the "Tony Gobar IACCII Fund," which shall consist of funds appropriated or otherwise made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used by the Division of Youth Services for the purposes described in this section.

(b)(i) During the regular legislative session held in calendar year 2007, the Legislature may appropriate an amount not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) to the Tony Gobar IACCII Fund.

(ii) During each regular legislative session subsequent to the 2007 Regular Session, the Legislature shall appropriate Two Million Five Hundred Thousand Dollars ($2,500,000.00) to the Tony Gobar IACCII Fund.

SOURCES: Laws, 2006, ch. 539, § 8; Laws, 2007, ch. 557, § 2; Laws, 2009, ch. 498, § 1; Laws, 2012, ch. 427, § 1, eff from and after July 1, 2012.

Cross References — Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

CHAPTER 23

Family Courts
[Repealed]

§§ 43-23-1 through 43-23-55. Repealed.

Repealed by Laws, 1999, ch. 432, § 2, eff from and after May 28, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965).

§ 43-23-1. [Codes, 1942, § 7187-01; Laws, 1964, ch. 328, § 1, eff from and after passage (approved May 22, 1964)]

§ 43-23-3. [Codes, 1942, § 7187-02; Laws, 1964, ch. 328, § 2; Laws 1977, ch. 474, § 4, eff from and after July 1, 1977]

§ 43-23-5. [Codes, 1942, § 7187-03; Laws, 1964, ch. 328, § 3, eff from and after passage (approved May 22, 1964)]

§ 43-23-7. [Codes, 1942, § 7187-04; Laws, 1964, ch. 328, § 4, eff from and after passage (approved May 22, 1964)]

§ 43-23-9. [Codes, 1942, § 7187-05; Laws, 1964, ch. 328, § 5; Laws, 1977, ch. 474, § 5; Laws, 1978, ch. 471, § 2, eff from and after passage (approved April 4, 1978)]

§ 43-23-11. [Codes, 1942, § 7187-06; Laws, 1964, ch. 328, § 6, eff from and after passage (approved May 22, 1964)]

§ 43-23-13. [Codes, 1942, § 7187-07; Laws, 1964, ch. 328, § 7, eff from and after passage (approved May 22, 1964)]

§ 43-23-15. [Codes, 1942, § 7187-08; Laws, 1964, ch. 328, § 8; Laws, 1977, ch. 474, § 6, eff from and after July 1, 1977]

§ 43-23-17. [Codes, 1942, § 7187-09; Laws, 1964, ch. 328, § 9; Laws, 1966, ch. 606, § 1, eff from and after passage (approved April 11, 1966)]

§ 43-23-19. [Codes, 1942, § 7187-10; Laws, 1964, ch. 328, § 10, eff from and after passage (approved May 22, 1964)]

§ 43-23-21. [Codes, 1942, § 7187-11; Laws, 1964, ch. 328, § 11, eff from and after passage (approved May 22, 1964)]

§ 43-23-23. [Codes, 1942, § 7187-12; Laws, 1964, ch. 328, § 12, eff from and after passage (approved May 22, 1964)]

§ 43-23-25. [Codes, 1942, § 7187-13; Laws, 1964, ch. 328, § 13, eff from and after passage (approved May 22, 1964)]

§ 43-23-27. [Codes, 1942, § 7187-14; Laws, 1964, ch. 328, § 14, eff from and after passage (approved May 22, 1964)]

§ 43-23-29. [Codes, 1942, § 7187-15; Laws, 1964, ch. 328, § 15, eff from and after passage (approved May 22, 1964)]

§ 43-23-31. [Codes, 1942, § 7187-16; Laws, 1964, ch. 328, § 16, eff from and after passage (approved May 22, 1964)]

§ 43-23-33. [Codes, 1942, § 7187-17; Laws, 1964, ch. 328, § 17, eff from and after passage (approved May 22, 1964)]

§ 43-23-35. [Codes, 1942, § 7187-18; Laws, 1964, ch. 328, § 18, eff from and after passage (approved May 22, 1964)]

§ 43-23-37. [Codes, 1942, § 7187-19; Laws, 1964, ch. 328, § 19; Laws 1986, ch. 356, eff from and after July 1, 1986]

§ 43-23-39. [Codes, 1942, § 7187-20; Laws, 1964, ch. 328, § 20; Laws 1966, ch. 345, § 1; Laws 1968, ch. 311, § 2; Laws, 1970, ch. 402, § 4; Laws, 1971, ch. 495, § 1; Laws, 1973, ch. 486, § 1, eff from and after passage (approved April 12, 1973)]

§ 43-23-41. [Codes, 1942, § 7187-21; Laws, 1964, ch. 328, § 21; Laws 1977, ch. 474, § 7, eff from and after July 1, 1977]

§ 43-23-43. [Codes, 1942, § 7187-22; Laws, 1964, ch. 328, § 22; Laws, 1985, ch. 536, § 10; Laws, 1986, ch. 400, § 29, eff from and after Oct 1, 1986]

§ 43-23-45. [Codes, 1942, § 7187-23; Laws, 1964, ch. 328, § 23, eff from and after passage (approved May 22, 1964)]

§ 43-23-47. [Codes, 1942, § 7187-24; Laws, 1964, ch. 328, § 24; Laws, 1968, ch. 361, § 69; Laws, 1979, ch. 397, eff from and after May 1, 1979]

§ 43-23-49. [Codes, 1942, § 7187-25; Laws, 1964, ch. 328, § 25, eff from and after passage (approved May 22, 1964)]

§ 43-23-51. [Codes, 1942, § 7187-26; Laws, 1964, ch. 328, § 26, eff from and after passage (approved May 22, 1964)]

§ 43-23-53. [Codes, 1942, § 7187-27; Laws, 1964, ch. 328, § 27, eff from and after passage (approved May 22, 1964)]

§ 43-23-55. [Codes, 1942, § 7187-28; Laws, 1964, ch. 328, § 28, eff from and after passage (approved May 22, 1964)]

Editor's Note — Laws of 1999, ch. 432, § 1, provides:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of this chapter by Laws of 1999, ch. 432, § 2.

Former § 43-23-1 related to establishment clause.

Former § 43-23-3 related to definitions.

Former § 43-23-5 related to jurisdiction.

Former § 43-23-7 related to retention of jurisdiction.

Former § 43-23-9 related to how proceedings instituted.

Former § 43-23-11 related to summons; service of summons; notice; custody and detention.

Former § 43-23-13 related to warrant for failure to obey summons.

Former § 43-23-15 related to hearing; legal counsel; guardian ad litem for abused or neglected child.

Former § 43-23-17 related to adjudication; placement; status of child.

Former § 43-23-19 related to support of child committed for study or care.

Former § 43-23-21 related to medical examination; transcript of records; conveyance of child to institution.

Former § 43-23-23 related to violating order of court, contempt; punishment.

Former § 43-23-25 related to contributing to the neglect or delinquency of a child made a misdemeanor.

Former § 43-23-27 related to appointment of referees; duties.

Former § 43-23-29 related to transfer of felony cases to other courts; jurisdiction of certain cases given to circuit court.

Former § 43-23-31 related to transfer of misdemeanor cases from other courts unless prosecution permitted by family court.

Former § 43-23-33 related to no child under thirteen years of age to be prosecuted criminally.

Former § 43-23-35 related to charge to grand jury.

Former § 43-23-37 related to circuit court's discretion concerning cases.

Former § 43-23-39 related to family court judge qualifications; election; term of office; salary.

Former § 43-23-41 related to records; clerks.

Former § 43-23-43 related to youth counsellors.

Former § 43-23-45 related to cooperation.

Former § 43-23-47 related to court costs and fees.

Former § 43-23-49 related to appeals.

Former § 43-23-51 related to chancery court jurisdiction not abridged.

Former § 43-23-53 related to construction and purpose of chapter.

Former § 43-23-55 related to establishment of family court to divest county court of jurisdiction conferred by Youth Court Law.

CHAPTER 24

State Central Registry of Child Abuse Reports; Wide Area Telephone Service for Reporting Child Abuse
[Repealed]

§§ 43-24-1 through 43-24-9. Repealed.

Repealed by Laws, 1979, ch. 506, § 78, eff from and after July 1, 1979.

§ 43-24-1. [Laws, 1977, ch. 474, § 8]

§§ 43-24-3, 43-21-5. [Laws, 1977, ch. 474, §§ 9, 10; Laws, 1978, ch. 471, § 3]

§§ 43-24-7, 43-24-9. [Laws, 1977, ch. 474, §§ 11, 12]

Editor's Note — Former § 43-24-1 provided for a state central registry file to be kept by the state department of public welfare, listing information concerning reported abused children. For present similar provisions, see § 43-21-257.

Former § 43-24-3 related to the confidentiality of reports of harm to children made under the chapter. For present similar provisions, see § 43-21-257.

Former § 43-24-5 made it a misdemeanor to disclose information in the central registry and provided a penalty. For present similar provisions, see § 43-21-353.

Former § 43-24-7 authorized the state department of public welfare to maintain a statewide incoming wide area telephone service (WATS) for the reporting of cases of suspected child abuse. For present similar provisions, see § 43-21-353.

Former § 43-24-9 called for the cooperation of all law enforcement and other public agencies and officials with the courts and the state department of public welfare in the enforcement of the provisions of law with respect to battered and abused children.

CHAPTER 25

Interstate Compacts Relating to Juveniles

Interstate Compact on Juveniles 43-25-1
Interstate Compact for Juveniles 43-25-101

INTERSTATE COMPACT ON JUVENILES

Sec.
43-25-1 through 43-25-17. Repealed

§§ 43-25-1 through 43-25-17. Repealed.

Repealed by Laws, 2009, ch. 366, § 2, effective July 1, 2009.

§ 43-25-1. [Codes, 1942, § 7186-01; Laws, 1958, ch. 289, § 1, eff from and after passage (approved May 6, 1958).]

§ 43-25-3. [Codes, 1942, § 7186-02; Laws, 1958, ch. 289, § 2, eff from and after passage (approved May 6, 1958).]

§ 43-25-5. [Codes, 1942, § 7186-03; Laws, 1958, ch. 289, § 2A, eff from and after passage (approved May 6, 1958).]

§ 43-25-7. [Codes, 1942, § 7186-04; Laws, 1958, ch. 289, § 2B, eff from and after passage (approved May 6, 1958).]

§ 43-25-9. [Codes, 1942, § 7186-05; Laws, 1958, ch. 289, § 3, eff from and after passage (approved May 6, 1958).]

§ 43-25-11. [Codes, 1942, § 7186-06; Laws, 1958, ch. 289, § 4, eff from and after passage (approved May 6,1958).]

§ 43-25-13. [Codes, 1942, § 7186-07; Laws, 1958, ch. 289, § 5, eff from and after passage (approved May 6, 1958).]

§ 43-25-15. [Codes, 1942, § 7186-08; Laws, 1958, ch. 289, § 6, eff from and after passage (approved May 6, 1958).]

§ 43-25-17. [Codes, 1942, § 7186-09; Laws, 1958, ch. 289, § 7, eff from and after passage (approved May 6, 1958).]

Editor's Note — Former § 43-25-1 related to legislative findings and policy regarding the Interstate Compact on Juveniles. For present similar provisions, see § 43-25-101.

Former § 43-25-3 authorized the Governor to execute the compact. For present similar provisions, see § 43-25-101.

Former § 43-25-5 authorized the Governor to execute an additional Article XVI. For present similar provisions, see § 43-25-101.

Former § 43-25-7 authorized the Governor to amend the compact by executing Article XVII. For present similar provisions, see § 43-25-101.

Former § 43-25-9 authorized the Governor to designate an officer to be the compact administrator. For present similar provisions, see § 43-25-101.

Former § 43-25-11 authorized the compact administrator to enter into supplementary agreements with appropriate officials of other states. For present similar provisions, see § 43-25-101.

Former § 43-25-13 authorized the compact administrator upon approval of the chief state fiscal officer to make any payments necessary to discharge any financial obligations. For present similar provisions, see § 43-25-101.

Former § 43-25-15 made state departments, agencies and officers responsible for enforcing the compact. For present similar provisions, see § 43-25-101.

Former § 43-25-17 provided that additional procedures to those provided in Articles IV and VI of the compact for the return of any runaway juvenile were not precluded. For present similar provisions, see § 43-25-101.

INTERSTATE COMPACT FOR JUVENILES

SEC.	
43-25-101.	Purpose; definitions; Interstate Commission for Juveniles creation, powers and duties, organization, operation, rulemaking functions, enforcement, dispute resolution, and finance; State Council for Interstate Juvenile Supervision; compact effective date and amendment; withdrawal, default, termination and judicial enforcement; severability; relationship to other laws.

§ 43-25-101. Purpose; definitions; Interstate Commission for Juveniles creation, powers and duties, organization, operation, rulemaking functions, enforcement, dispute resolution, and finance; State Council for Interstate Juvenile Supervision; compact effective date and amendment; withdrawal, default, termination and judicial enforcement; severability; relationship to other laws.

The Governor, on behalf of this state, may execute a compact in substantially the following form, and the Legislature signifies in advance its approval and ratification of the compact:

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I

PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 USCS Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

(a) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(b) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected.

(c) Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(d) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(e) Provide for the effective tracking and supervision of juveniles;

(f) Equitably allocate the costs, benefits and obligations of the compacting states;

(g) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;

(h) Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(i) Establish procedures to resolve pending charges (detainers) against juvenile offenders before transfer or release to the community under the terms of this compact.

(j) Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state, executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(k) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(*l*) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in that activity; and

(m) Coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise.

It is the policy of the compacting states that the activities conducted by the Interstate Commission created by this compact are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

(b) "Compact administrator" means the individual in each compacting state appointed under the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

(c) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(d) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(e) "Court" means any court having jurisdiction over delinquent, neglected or dependent children.

(f) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator under the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

(g) "Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this compact.

(h) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(i) Accused delinquent, which is a person charged with an offense that, if committed by an adult, would be a criminal offense;

(ii) Adjudicated delinquent, which is a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(iii) Accused status offender, which is a person charged with an offense that would not be a criminal offense if committed by an adult;

(iv) Adjudicated status offender, which is a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(v) Nonoffender, which is a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(i) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(j) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(k) "Rules" means a written statement by the Interstate Commission promulgated under Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal or suspension of an existing rule.

(*l*) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa and the Northern Marianas Islands.

ARTICLE III
INTERSTATE COMMISSION FOR JUVENILES

(1) The compacting states create the "Interstate Commission for Juveniles." The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth in this compact, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(2) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created under this compact. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under the applicable law of the compacting state.

(3) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Those noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio nonvoting members. The Interstate Commission may provide in its bylaws for additional ex officio nonvoting members, including members of other national organizations, in such numbers as determined by the commission.

(4) Each compacting state represented at any meeting of the commission is entitled to one (1) vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(5) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(6) The Interstate Commission shall establish an executive committee, which shall include commission officers, members and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rule making and/or amendment to the compact. The executive committee shall oversee the day-to-day

activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.

(7) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the State Council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(8) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(9) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds (2/3) vote that an open meeting would be likely to:

(a) Relate solely to the Interstate Commission's internal personnel practice and procedures;

(b) Disclose matters specifically exempted from disclosure by statute;

(c) Disclose trade secrets or commercial or financial information that is privileged or confidential;

(d) Involve accusing any person of a crime, or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigative records compiled for law enforcement purposes;

(g) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;

(h) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(i) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(10) For every meeting closed under this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's

opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

(11) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules, which shall specify the data to be collected, the means of collection, data exchange and reporting requirements. Those methods of data collection, exchange and reporting shall, insofar as is reasonably possible, conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

(a) To provide for dispute resolution among compacting states.

(b) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(c) To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.

(d) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(e) To establish and maintain offices, which shall be located within one or more of the compacting states.

(f) To purchase and maintain insurance and bonds.

(g) To borrow, accept, hire or contract for services of personnel.

(h) To establish and appoint committees and hire staff that it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties under this compact.

(i) To elect or appoint officers, attorneys, employees, agents or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation and qualifications of personnel.

(j) To accept any and all donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of it.

(k) To lease, purchase, accept contributions or donations of or otherwise to own, hold, improve or use any property, real, personal or mixed.

(*l*) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed.

(m) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

(n) To sue and be sued.

(o) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(q) To report annually to the legislatures, governors, judiciary, and State Councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Those reports also shall include any recommendations that may have been adopted by the Interstate Commission.

(r) To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in that activity.

(s) To establish uniform standards of the reporting, collecting and exchanging of data.

(t) To maintain its corporate books and records in accordance with the bylaws.

ARTICLE V
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(1) **Bylaws.** The Interstate Commission shall, by a majority of the members present and voting, within twelve (12) months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(a) Establishing the fiscal year of the Interstate Commission;

(b) Establishing an executive committee and such other committees as may be necessary;

(c) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

(d) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(e) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(f) Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(g) Providing "start-up" rules for initial administration of the compact; and

(h) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(2)(a) **Officers and Staff.** — The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; however, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(b) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

(3)(a) **Qualified Immunity, Defense and Indemnification.** — The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; however, any such person shall not be protected from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(b) The liability of any commissioner, or the employee of an agent of a commissioner, acting within the scope of the person's employment or duties for acts, errors or omissions occurring within the person's state, may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(c) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend the commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant has a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of the person.

(d) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against those persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that those persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI

RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(2) Rule making shall occur using the criteria set forth in this article and the bylaws and rules adopted under this article. That rule making shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Volume 15, page 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

(3) When promulgating a rule, the Interstate Commission shall, at a minimum:

(a) Publish the proposed rule's entire text stating the reason(s) for that proposed rule;

(b) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available;

(c) Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

(d) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(4) Allow not later than sixty (60) days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of the rule. If the court finds that the Interstate Commission's action is not supported by

substantial evidence in the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(5) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that the rule shall have no further force and effect in any compacting state.

(6) The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created under this compact.

(7) Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rule-making procedures provided under this article retroactively applied to the rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII

OVERSIGHT, ENFORCEMENT AND DISPUTES RESOLUTION BY THE INTERSTATE COMMISSION

(1)(a) **Oversight.** — The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor those activities being administered in noncompacting states that may significantly affect compacting states.

(b) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact shall be received by all the judges, public officers, commissions and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(2)(a) **Dispute Resolution.** — The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact, as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(b) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII
FINANCE

(1) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(2) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state, and shall promulgate a rule binding upon all compacting states which governs the assessment.

(3) The Interstate Commission shall not incur any obligations of any kind before securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX
THE STATE COUNCIL

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own State Council, its membership must include at least one (1) representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each State Council will advise and may exercise oversight and advocacy concerning the state's participation in Interstate Commission activities and other duties as may be determined by that state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X
COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(1) Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less that thirty-five (35) of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis before adoption of the compact by all states and territories of the United States.

(3) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI
WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

(1)(a) **Withdrawal.** — Once effective, the compact shall continue in force and remain binding upon each and every compacting state; however, a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repeal.

(c) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

(d) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(2)(a) **Technical Assistance, Fines, Suspension, Termination and Default.** — If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(i) Remedial training and technical assistance as directed by the Interstate Commission;

(ii) Alternative dispute resolution;

(iii) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

(iv) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature and the State Council. The grounds for default include, but are not limited to, failure of a compacting state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Within sixty (60) days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or the chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the State Council of that termination.

(c) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(d) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(e) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(3) **Judicial Enforcement.** The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District

Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district court where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation, including reasonable attorney's fees.

(4)(a) **Dissolution of Compact.** — The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one (1) compacting state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII
SEVERABILITY AND CONSTRUCTION

(1) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

(1)(a) **Other Laws.** — Nothing in this compact prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(b) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

(2)(a) **Binding Effect of the Compact.** — All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

(b) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding that meaning or interpretation.

(d) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Interstate Commission shall be ineffective and those obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

SOURCES: Laws, 2009, ch. 366, § 1, eff from and after July 1, 2009.

Editor's Note — On August 26, 2008, Illinois became the 35th state to pass the compact.

Cross References — Interstate Compact for the Placement of Children, see §§ 43-18-1 et seq.

Youth court generally, see §§ 43-21-45 et seq.

Interstate Compact for Adult Offender Supervision, see §§ 47-7-81 et seq.

Comparable Laws from other States — Alabama Code Annotated, §§ 44-2-10 et seq.

Arkansas Code Annotated, §§ 9-29-401 et seq.

Florida Statutes Annotated, §§ 985.801 et seq.

Louisiana Statutes Annotated, §§ 1661 et seq.

North Carolina General Statutes, §§ 7B-4000 et seq.

Tennessee Code Annotated, § 37-4-101.

Texas Family Code, §§ 60.005 et seq.

Virginia Code Annotated, §§ 16.1-323 et seq.

CHAPTER 27

Department of Youth Services

In General 43-27-1
Services and Care for Certain Children and Youth in Custody of or Under the Supervision of the Department of Human Services 43-27-101
Improvements to Juvenile Correctional Facilities 43-27-201
Juvenile Health Recovery Study 43-27-301
Amer-I-Can Pilot Program 43-27-401

IN GENERAL

Sec.
43-27-1. Repealed.
43-27-2. Department of Human Services to be Department of Youth Services.
43-27-3. Repealed.
43-27-4. Repealed.
43-27-5. Repealed.
43-27-6. Repealed.
43-27-7. Repealed.
43-27-8. Duties and responsibilities of Department of Human Services.
43-27-9. Repealed.
43-27-10. Powers of Department of Human Services.
43-27-11. Control and management by Department of Human Services; funds.
43-27-12. Department of Youth Services to have exclusive care of children committed to its facilities.
43-27-13. Repealed.
43-27-14. Department of Youth Services authorized to accept federal and other funds, attorney general is legal representative of department.
43-27-15. Repealed.
43-27-16. Furnishing of information, data, aid and assistance by state agencies, departments and the like.
43-27-17. Cooperation of other departments.
43-27-18. Positions in Department of Youth Services to be included in state classification system.
43-27-19. Records and reports.
43-27-20. Division of Community Services; Director [Repealed effective July 1, 2019].
43-27-21. Repealed.
43-27-22. Office of Juvenile Correctional Institutions.
43-27-23. Board and lodging for superintendents.
43-27-25. Persons having mental illness or intellectual disability shall not be committed to institutions under control of department of youth services.
43-27-27. Transfers of children.
43-27-29. Academic and vocational training.
43-27-31. Repealed.
43-27-33. Effect of chapter on other laws.
43-27-35. Contracting for acquisition of land, buildings or equipment suitable for housing and facilities for youth under jurisdiction of Department of Human Services; Newton County facility.
43-27-37. Creation of Statewide Juvenile Work Program.
43-27-39. Use of Columbia Training School as secure training school for juvenile

delinquents to be discontinued; all youth adjudicated to training school to be housed at Oakley Training School.

§ 43-27-1. Repealed.

Repealed by Laws, 1973, ch. 438, § 18, eff from and after July 1, 1973. [Laws, 1948, ch. 429, § 1; Laws, 1970, ch. 391, § 1]

Editor's Note — Former § 43-27-1 related to the state training schools at Columbia and Oakley and the power of the board of trustees with respect to their operation.

§ 43-27-2. Department of Human Services to be Department of Youth Services.

The Department of Human Services shall be the Department of Youth Services and shall retain all powers and duties granted by law to the Department of Youth Services, and wherever the term "Department of Youth Services" appears in any law the same shall mean the Department of Human Services. The executive director of the department may assign to appropriate divisions such powers and duties as deemed appropriate to carry out the functions of the department. The executive director of the department may assign such powers and duties as deemed appropriate to carry out the functions of the department.

SOURCES: Laws, 1973, ch. 438, § 1; Laws, 1989, ch. 544, § 99, eff from and after July 1, 1989.

Cross References — General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

Creation and organization of department of human services, and executive director of department, see § 43-1-2.

Cooperation by department of youth services with Mississippi Council of Youth Court Judges, see § 43-21-125.

Disposition proceedings in youth court, see §§ 43-21-601 et seq.

RESEARCH REFERENCES

Am Jur. 60 Am. Jur. 2d, Penal and Correctional Institutions §§ 1 et seq.

Practice References. Michael J. Dale, Representing the Child Client (Matthew Bender).

Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions Third Edition (Michie).

§ 43-27-3. Repealed.

Repealed by Laws, 1973, ch. 438, § 18, eff from and after July 1, 1973. [Laws, 1948, ch. 429, § 3; Laws, 1970, ch. 391, § 2]

Editor's Note — Former § 43-27-3 created the board of trustees of the Mississippi training schools.

§ 43-27-4. Repealed.

Repealed by Laws, 1989, ch. 544, § 100, eff from and after July 1, 1989. [Laws, 1973, ch. 438, § 2]

Editor's Note — Former § 43-27-4 related to the appointment and term of members of board of youth services.

§ 43-27-5. Repealed.

Repealed by Laws, 1973, ch. 438, § 18, eff from and after July 1, 1973. [Laws, 1948, ch. 429, § 4]

Editor's Note — Former § 43-27-5 related to the appointment and term of office of members of the board of trustees.

§ 43-27-6. Repealed.

Repealed by Laws, 1989, ch. 544, § 101, eff from and after July 1, 1989. [Laws, 1973, ch. 438, § 3; Laws, 1983, ch. 507]

§ 43-27-7. Repealed.

Repealed by Laws, 1973, ch. 438, § 18, eff from and after July 1, 1973. [Laws, 1948, ch. 429, § 5; Laws, 1970, ch. 391, § 3]

Editor's Note — Former § 43-27-7 related to the organization and meetings of the board of trustees.

§ 43-27-8. Duties and responsibilities of Department of Human Services.

The Department of Human Services, shall administer the following duties and responsibilities:

(a) To implement and administer laws and policy relating to youth services and coordinate the efforts of the department with those of the federal government and other state departments and agencies, county governments, municipal governments and private agencies concerned with providing youth services.

(b) To establish standards, provide technical assistance and exercise the requisite supervision as it relates to youth service programs over all state-supported juvenile correctional facilities.

(c) To promulgate and publish such rules, regulations and policies of the department as are needed for the efficient government and maintenance of all facilities and programs in accord, insofar as possible, with currently accepted standards of juvenile care and treatment.

SOURCES: Laws, 1973, ch. 438, § 4; Laws, 1989, ch. 544, § 102; Laws, 1990, ch. 522, § 21; Laws, 1991, ch. 434, § 2; Laws, 1992, ch. 585 § 6, eff from and after passage (approved May 14, 1992).

Cross References — Creation and organization of department of human services, and executive director of department, see § 43-1-2.

Transfer of functions from department of youth services to department of human services, see § 43-27-2.

§ 43-27-9. Repealed.

Repealed by Laws, 1973, ch. 438, § 18, eff from and after July 1, 1973.

[Laws, 1948, ch. 429, § 6; Laws, 1968, ch. 416, § 2; Laws, 1970, ch. 391, § 4]

Editor's Note — Former § 43-27-9 fixed the per diem and travel expenses paid members of the board of trustees and provided the method of payment.

§ 43-27-10. Powers of Department of Human Services.

(1) The Mississippi Department of Human Services shall exercise executive and administrative supervision over all state-owned facilities used for the detention, training, care, treatment and aftercare supervision of delinquent children properly committed to or confined in said facilities by a court on account of such delinquency; provided, however, such executive and administrative supervision under state-owned facilities shall not extend to any institutions and facilities for which executive and administrative supervision has been provided otherwise by law through other agencies.

(2) Such facilities shall include, but not be limited to, the Oakley Training School, which is now the Oakley Youth Development Center, created by Chapter 205, Laws of 1942, and those facilities authorized by Chapter 652, Laws of 1994.

(3) The department shall have the power as a corporate body to receive, hold and use personal, real and mixed property donated to them or property acquired under Section 43-27-35, and shall have such other corporate authority as shall now or hereafter be necessary for the operation of any such facility. The department shall be responsible for the planning, development and coordination of a statewide, comprehensive youth services program designed to train and rehabilitate children in order to prevent, control and retard juvenile delinquency.

(4) The department is authorized to develop and implement diversified public, private, or contractual programs and facilities to promote, enhance, provide and assure the opportunities for the successful care, training and treatment of delinquent children properly committed to or confined in any facility under its control. Such programs and facilities may include, but not be limited to, training schools, foster homes, halfway houses, forestry camps, regional assessment, classification and diagnostic centers, detention centers, group homes, regional and community-based juvenile intensive residential treatment facilities, specialized and therapeutic programs and facilities, and other state and local community-based programs and facilities.

(5) The department is authorized to acquire whatever hazard, casualty or workers' compensation insurance is necessary for any property, real or per-

sonal, owned, leased or rented by the department or for any employees or personnel hired by the department and may acquire professional liability insurance on all employees as deemed necessary and proper by the department. All premiums due and payable on account thereof shall be paid out of the funds of the department.

SOURCES: Laws, 1973, ch. 438, § 5; Laws, 1978, ch. 313, § 1; Laws, 1984, ch. 495, § 20; reenacted and amended, Laws, 1985, ch. 474, § 15; Laws, 1986, ch. 438, § 30; Laws, 1987, ch. 483, § 31; Laws, 1988, ch. 442, § 28; Laws, 1989, ch. 537, § 27; Laws, 1990, ch. 518, § 28; Laws, 1991, ch. 618, § 27; Laws, 1992, ch. 491 § 29; Laws, 1994, ch. 587, § 2; Laws, 2009, ch. 408, § 1; Laws, 2010, ch. 554, § 5, eff from and after July 1, 2011.

Cross References — Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the state fiscal management board, see § 11-46-17.

Creation and organization of department of human services, and executive director of department, see § 43-1-2.

Custody and detention of child, see § 43-21-301 et seq.

Disposition alternatives in delinquency cases, see § 43-21-605.

Transfer of functions from department of youth services to department of human services, see § 43-27-2.

§ 43-27-11. Control and management by Department of Human Services; funds.

The Mississippi Department of Human Services shall succeed to the exclusive control of all records, books, papers, equipment and supplies, and all lands, buildings and other real and personal property now or hereafter belonging to or assigned to the use and benefit or under the control of the Oakley Youth Development Center, and shall have the exercise and control of the use, distribution and disbursement of all funds, appropriations and taxes now or hereafter in possession, levied, collected or received or appropriated for the use, benefit, support and maintenance of these two (2) institutions, and the department shall have general supervision of all the affairs of the two (2) institutions herein named, and the care and conduct of all buildings and grounds, business methods and arrangements of accounts and records, the organization of the administrative plans of each institution, and all other matters incident to the proper functioning of the institutions. The department shall have full authority over the operation of any and all farms at each of said institutions and over the distribution of agricultural, dairy, livestock and any and all other products therefrom and over all funds received from the sale of hogs and livestock. All sums realized from the sale of products manufactured and fabricated in the shops of the vocational departments of such institutions shall be placed in the revolving fund of the respective institutions in which said products were manufactured, fabricated and sold.

The department shall be authorized to lease the lands for oil, gas and mineral exploration, and for such other purposes as the department deems to be appropriate, on such terms and conditions as the department and lessee agree. The department may contract with the State Forestry Commission for the proper management of forest lands and the sale of timber, and the department is expressly authorized to sell timber and forestry products. The department is further authorized to expend the net proceeds from incomes from all leases and timber sales exclusively for the instructional purposes or operational expenses, or both, at the two (2) institutions under its jurisdiction.

The granting of any leases for oil, gas and mineral exploration shall be on a public bid basis as prescribed by law.

SOURCES: Codes, 1942, § 6744-07; Laws, 1948, ch. 429, § 7; Laws, 1950, ch. 197; Laws, 1964, ch. 561; Laws, 1970, ch. 391, § 8; Laws, 1973, ch. 438, § 16; Laws, 1995, ch. 324, § 2; Laws, 2003, ch. 494, § 2; Laws, 2010, ch. 554, § 6, eff from and after July 1, 2011.

Cross References — Creation and organization of department of human services, and executive director of department, see § 43-1-2.

Disclosure of records of disbursement and payment of welfare assistance, see § 43-1-19.

Transfer of functions from department of youth services to department of human services, see § 43-27-2.

Columbia Training School no longer operating as secure training school for juvenile delinquents, see § 43-27-39.

Use of Columbia Training School property, see § 43-27-39.

Duties and powers of state forestry commission, see § 49-19-3.

§ 43-27-12. Department of Youth Services to have exclusive care of children committed to its facilities.

The Department of Youth Services shall have exclusive supervisory care, custody and active control of all children properly committed to or confined in its facilities and included in its programs and shall have control of the grounds, buildings and other facilities and properties of said facilities and programs.

SOURCES: Laws, 1973, ch. 438, § 6, eff from and after July 1, 1973.

Editor's Note — Section 43-27-2 provides that the term "Department of Youth Services" shall mean the "Department of Human Services."

Cross References — Creation and organization of department of human services, and executive director of department, see § 43-1-2.

Custody and detention of children, see § 43-21-301 et seq.

Disposition proceedings in youth court, see §§ 43-21-601 et seq.

Transfer of functions from department of youth services to department of human services, see § 43-27-2.

§ 43-27-13. Repealed.

Repealed by Laws, 1973, ch. 438, § 18, eff from and after July 1, 1973. [Laws, 1948, ch. 429, § 8]

Editor's Note — Former § 43-27-13 authorized the board of trustees to establish policies, procedures, rules and regulations, and to employ the necessary professional and clerical help.

§ 43-27-14. Department of Youth Services authorized to accept federal and other funds, attorney general is legal representative of department.

The Department of Youth Services shall have the authority to accept any allotments of federal funds and commodities and shall manage and dispose of them in whatever manner may be required by federal law, and may take advantage of any federal programs, grants-in-aid, or other public or private assistance which may be offered or available which will accomplish or further the objectives of the department. Except as otherwise authorized in Section 7-5-39, the Attorney General shall be the legal representative of the department.

SOURCES: Laws, 1973, ch. 438, § 7; Laws, 2012, ch. 546, § 20, eff from and after July 1, 2012.

Editor's Note — Section 43-27-2 provides that the term "Department of Youth Services" shall mean the "Department of Human Services".

Cross References — Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from Department of Youth Services to Department of Human Services, see § 43-27-2.

§ 43-27-15. Repealed.

Repealed by Laws, 1973, ch 438, § 18, eff from and after July 1, 1973.

[Laws, 1948, ch. 429, § 9; Laws, 1966, ch. 422, § 1; Laws, 1970, ch. 391, § 5]

Editor's Note — Former § 43-27-15 authorized the board of trustees to employ a director of training schools and a superintendent for each training school, and dealt with their compensation, power, authority and duty.

§ 43-27-16. Furnishing of information, data, aid and assistance by state agencies, departments and the like.

The Department of Youth Services is authorized to request from any and all existing agencies, departments, divisions, officers, employees, boards, bureaus, commissions and institutions of the State of Mississippi, or any political subdivision thereof, information, data and assistance as will enable the department to fulfill its duties hereunder, and all such agencies, departments, divisions, officers, employees, boards, bureaus, commissions and institutions of the State of Mississippi and its political subdivisions are hereby directed to cooperate with the department and render such information, data, aid and assistance as may be requested by the department.

SOURCES: Laws, 1973, ch. 438, § 8, eff from and after July 1, 1973.

Editor's Note — Section 43-27-2 provides that the term "Department of Youth Services" shall mean the "Department of Human Services".

Cross References — Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from Department of Youth Services to department of human services, see § 43-27-2.

§ 43-27-17. Cooperation of other departments.

The Department of Human Services shall use the services and resources of the state departments of education and health, and of all other appropriate state departments, agencies or institutions, as will aid in carrying out the purposes of this chapter. It shall be the duty of all such state departments, agencies and institutions to make available such services and resources to the department.

SOURCES: Codes, 1942, § 6744-10; Laws, 1948, ch. 429, § 10; Laws, 1990, ch. 522, § 22, eff from and after July 1, 1990.

Cross References — Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from Department of Youth Services to department of human services, see § 43-27-2.

§ 43-27-18. Positions in Department of Youth Services to be included in state classification system.

All positions in the Department of Youth Services shall be included in the state classification system, but the department is encouraged to establish an incentive program to motivate workers who deal directly with the children to obtain master's degrees in the field of sociology, psychology or some other related field.

SOURCES: Laws, 1973, ch. 438, § 9, eff from and after July 1, 1973.

Editor's Note — Section 43-27-2 provides that the term "Department of Youth Services" shall mean the "Department of Human Services".

Laws of 1999, ch. 432, § 1, provides:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of Chapter 23, Family Courts, by Section 1 of Chapter 432, Laws of 1999.

Cross References — State classification system, see §§ 25-9-101 et seq.

Creation and organization of department of human services, and executive director of department, see § 43-1-2.

Transfer of functions from department of youth services to department of human services, see § 43-27-2.

§ 43-27-19. Records and reports.

The Department of Human Services shall keep in a suitable book a full and complete record of all of its actions under this chapter, which shall be open at all times to the inspection of the Governor and all persons whom he or either house of the Legislature may designate, and any member of the Legislature, to examine same.

SOURCES: Codes, 1892, § 4454; 1906, § 5031; Hemingway's 1917, § 7930; 1930, § 7317; 1942, §§ 6744-11, 6800; Laws, 1948, ch. 429, § 11; Laws, 1970, ch. 391, § 7; Laws, 1970, ch. 392, § 1; Laws, 1990, ch. 522, § 23; Laws, 1992, ch. 523, § 2, eff from and after July 1, 1992.

Cross References — Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from department of youth services to Department of Human Services, see § 43-27-2.

§ 43-27-20. Division of Community Services; Director [Repealed effective July 1, 2019].

(a) Within the Department of Youth Services there shall be a Division of Community Services which shall be headed by a director appointed by and responsible to the Director of the Department of Youth Services. He shall hold a master's degree in social work or a related field and shall have no less than three (3) years' experience in social services, or in lieu of such degree and experience, he shall have a minimum of eight (8) years' experience in social work or a related field. He shall employ and assign the community workers to serve in the various areas in the state and any other supporting personnel necessary to carry out the duties of the Division of Community Services.

(b) The Director of the Division of Community Services shall assign probation and aftercare workers to the youth court or family court judges of the various court districts upon the request of the individual judge on the basis of case load and need, when funds are available. The probation and aftercare workers shall live in their respective districts except upon approval of the Director of the Division of Community Services. The Director of the Division of Community Services is authorized to assign a youth services counselor to a district other than the district in which the youth services counselor lives upon the approval of the youth court judge of the assigned district and the Director of the Division of Youth Services. Every placement shall be with the approval of the youth court or the family court judge, and a probation and aftercare worker may be removed for cause from a youth or family court district.

(c) Any counties or cities which, on July 1, 1973, have court counselors or similar personnel may continue using this personnel or may choose to come within the statewide framework.

(d) A probation and aftercare worker may be transferred by the division from one (1) court to another after consultation with the judge or judges in the court to which the employee is currently assigned.

(e) The Division of Community Services shall have such duties as the Department of Youth Services shall assign to it which shall include, but not be limited to, the following:

(1) Preparing the social, educational and home-life history and other diagnostic reports on the child for the benefit of the court or the training school; however, this provision shall not abridge the power of the court to require similar services from other agencies, according to law.

(2) Serving in counseling capacities with the youth or family courts.

(3) Serving as probation agents for the youth or family courts.

(4) Serving, advising and counseling of children in the various institutions under the control of the Division of Juvenile Institutions as may be necessary to the placement of the children in proper environment after release and the placement of children in suitable jobs where necessary and proper.

(5) Supervising and guiding of children released or conditionally released from institutions under the control of the Division of Juvenile Institutions.

(6) Counseling in an aftercare program.

(7) Coordinating the activities of supporting community agencies which aid in the social adjustment of children released from the institution and in an aftercare program.

(8) Providing or arranging for necessary services leading to the rehabilitation of delinquents, either within the division or through cooperative arrangements with other appropriate agencies.

(9) Providing counseling and supervision for any child under ten (10) years of age who has been brought to the attention of the court when other suitable personnel is not available and upon request of the court concerned.

(10) Supervising the aftercare program and making revocation investigations at the request of the court.

(11) Implement a Standardized Risk Assessment Tool for use in the community.

(12) Develop a graduated sanctions policy for use within the community.

(f) This section shall stand repealed on July 1, 2019.

SOURCES: Laws, 1973, ch. 438, § 10; Laws, 1998, ch. 552, § 1; Laws, 2000, ch. 351, § 1; Laws, 2003, ch. 494, § 1; Laws, 2009, ch. 396, § 1; Laws, 2012, ch. 470, § 5; Laws, 2015, ch. 403, § 6, eff from and after July 1, 2015.

Editor's Note — Section 43-27-2 provides that the term "Department of Youth Services" shall mean the Department of Human Services.

Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of Chapter 23 of Title 43, regarding family courts, by Section 2 of Chapter 432, Laws of 1999.

Laws, 1998, ch. 552, § 2, as amended by Laws, 2000, ch. 351, § 2, provides that: "SECTION 2. This act shall take effect and be in force from and after July 1, 1998."

Amendment Notes — The 2015 amendment substituted "Juvenile Institutions" for "Juvenile Correctional Institutions" in (e)(4) and (5); added (e)(11) and (12); and extended the repealer provision in (f), from "July 1, 2015" to "July 1, 2019."

Cross References — Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from department of youth services to Department of Human Services, see § 43-27-2.

§ 43-27-21. Repealed.

Repealed by Laws, 1973, ch. 438, § 18, eff from and after July 1, 1973. [Laws, 1946, ch. 434, §§ 1-5; Laws, 1970, ch. 391, § 6]

Editor's Note — Former § 43-27-21 set out the objectives to be pursued in training youths in state training schools and dealt with the classification of youths, the provision of training facilities, and the acquisition of property.

§ 43-27-22. Office of Juvenile Correctional Institutions.

(1) Within the Department of Human Services there shall be an Office of Juvenile Correctional Institutions which shall be headed by a Director of Juvenile Institutions, who shall be appointed by the Director of the Division of Youth Services. The Director of Juvenile Institutions shall appoint the individual Division of Youth Services Institutional Administrators who, in turn, shall have full power to select and employ personnel necessary to operate the facility he directs, subject to the approval of the Director of the Division of Youth Services.

(2) The Office of Juvenile Correctional Institutions shall have such duties as the Director of the Division of Youth Services shall assign to it including, but not limited to, the following:

(a) Operation and maintenance of training schools and other facilities as may be needed to properly diagnose, care for, train, educate and rehabilitate children and youths who have been committed to or confined in the facilities or who are included in the programs of the facilities.

(b) Fulfillment of the objectives of rehabilitation and reformation of the youths confined in the schools, being careful to employ no discipline, training or utilization of time and efforts of such youth that shall under any condition or in any way interfere with such objectives.

(c) Grouping of the youths in the schools according to age, sex and disciplinary needs with respect to their housing, schooling, training, recreation and work, being careful to prevent injury to the morals or interference with the training and rehabilitation of the younger or correctable youths by those considered to be less amenable to discipline and rehabilitation.

SOURCES: Laws, 1973, ch. 438, § 11; Laws, 1990, ch. 522, § 24; Laws, 1998, ch. 388, § 1, eff from and after July 1, 1998.

Cross References — Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from Department of Youth Services to Department of Human Services, see § 43-27-2.

Board and lodging for superintendents, see § 43-27-23.

§ 43-27-23. Board and lodging for superintendents.

The superintendents of the Mississippi training schools may each receive free lodging in his respective institution for himself and his family, but not free board nor free supplies from the institution. Upon each superintendent's election to receive board for himself and family from the institution, the Department of Human Services shall enter on the minutes in advance the names and ages of the members of the family and fix the charges for their board at the average cost of table board in that community, but in no event at an amount less than the cost of said board to said institution, and said board so fixed shall be paid by the superintendent into the State Treasury before his salary for the next succeeding month shall be paid. The department shall make a detailed and itemized statement thereof to the Legislature. The same restrictions shall apply to all members of the clerical force of the institutions.

SOURCES: Codes, 1930, § 7294; 1942, § 6784; Laws, 1928, chs. 66, 68; Laws, 1990, ch. 522, § 25, eff from and after July 1, 1990.

Cross References — Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from Department of Youth Services to department of human services, see § 43-27-2.

§ 43-27-25. Persons having mental illness or intellectual disability shall not be committed to institutions under control of department of youth services.

No person shall be committed to an institution under the control of the Department of Youth Services who is seriously handicapped by having mental illness or an intellectual disability. If after a person is referred to the training schools it is determined that he has mental illness or an intellectual disability to an extent that he could not be properly cared for in its custody, the director may institute necessary legal action to accomplish the transfer of such person to such other state institution as, in his judgment, is best qualified to care for him in accordance with the laws of this state. The department shall establish standards with regard to the physical and mental health of persons which it can accept for commitment.

SOURCES: Laws, 1973, ch. 438, § 12; Laws, 2010, ch. 476, § 74, eff from and after passage (approved Apr. 1, 2010.)

Editor's Note — Section 43-27-2 provides that the term "Department of Youth Services" shall mean the "Department of Human Services".

Cross References — State mental institutions, see §§ 41-17-1 et seq.

Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from Department of Youth Services to Department of Human Services, see § 43-27-2.

§ 43-27-27. Transfers of children.

Any child committed to an institution under the provisions of this chapter may be transferred by the director of the department of youth services, in his discretion, to any of the schools or other facilities under his jurisdiction.

SOURCES: Laws, 1973, ch. 438, § 13, eff from and after July 1, 1973.

Editor's Note — Section 43-27-2 provides that the term "Department of Youth Services" shall mean the "Department of Human Services".

Cross References — Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from Department of Youth Services to Department of Human Services, see § 43-27-2.

§ 43-27-29. Academic and vocational training.

Academic and vocational training at all institutions under the department of youth services shall meet standards prescribed by the state department of education based upon standards required for public schools. The department may prescribe such additional requirements as it may from time to time deem necessary. The state superintendent of education will administer the standards related to the high school and elementary school programs. Reports from the state department of education evaluating the educational program at all juvenile correctional institutions and indicating whether or not the program meets the standards as prescribed shall be made directly to the director of the division of juvenile correctional institutions at regularly scheduled meetings. Such state department of education supervisory personnel as deemed appropriate shall be utilized for evaluating the programs and for reporting to the director of said division.

SOURCES: Laws, 1973, ch. 438, § 14, eff from and after July 1, 1973.

Editor's Note — Section 43-27-2 provides that the term "Department of Youth Services" shall mean the "Department of Human Services".

Cross References — State Department of Education generally, see §§ 37-3-1 et seq.

Creation and organization of Department of Human Services, and executive director of department, see § 43-1-2.

Transfer of functions from Department of Youth Services to Department of Human Services, see § 43-27-2.

§ 43-27-31. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983. [Laws, 1973, ch. 438, § 15]

Editor's Note — Former § 43-27-31 prohibited board members and department officers and employees from having an interest in contracts with the department.

§ 43-27-33. Effect of chapter on other laws.

Nothing in this chapter is intended to limit or restrict the operation and effect of Title IV, federal Social Security Act (Subchapter IV, Sections 601-604, Chapter 7, Title 42, U.S. Code Annotated) and Sections 43-15-1 through 43-15-9, inclusive, 43-17-1 through 43-17-25, inclusive, 43-25-1 through 43-25-17, inclusive, and 93-11-1 through 93-11-63, inclusive, Mississippi Code of 1972, which authorize the Department of Human Services to expend appropriated state and available federal funds for Temporary Assistance for Needy Families (TANF) child welfare services, and administer the interstate compact on juveniles under approved state-federal plans now in effect; this chapter being cumulative and supplementary. Nothing in this chapter is intended to limit or restrain the operation and effect of the Youth Court Law of 1946, as amended (Chapter 21 of this Title), or the Family Court Law of 1964, as amended (Chapter 23 of this Title), or the power granted to the youth courts or family courts therein outlined. The intent of this section is to insure that the final responsibility for a delinquent youth resides with the court that has jurisdiction and that the final responsibility for any and all services provided by any and all personnel assigned to a youth or family court resides with the responsible judge.

SOURCES: Laws, 1973, ch. 438, § 17; Laws, 1981, ch. 350, § 3; Laws, 1997, ch. 316, § 17, eff from and after passage (approved March 12, 1997).

Editor's Note — The interstate compact on juveniles referred to in this section and codified as §§ 43-25-1 et seq. was repealed by Laws of 2009, ch. 366, effective from and after July 1, 2009. For present similar provisions, see the Interstate Compact for Juveniles, codified as § 43-25-101.

Sections 93-11-1 through 93-11-63 referred to in this section were repealed by Laws of 1997, ch. 588, § 131, effective from and after July 1, 1997. For current provisions, see Uniform Interstate Family Support Act, § 93-25-1 et seq.

Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws of 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of Chapter 23, Family Courts, by Section 1 of Chapter 432, Laws of 1999.

Cross References — Creation and organization of department of human services, and executive director of department, see § 43-1-2.

Transfer of functions from department of youth services to department of human services, see § 43-27-2.

Temporary Assistance to Needy Families (TANF) program, see §§ 43-17-1 et seq.

Federal Aspects — Title IV of the federal Social Security Act, see 42 USCS §§ 601 et seq.

§ 43-27-35. Contracting for acquisition of land, buildings or equipment suitable for housing and facilities for youth under jurisdiction of Department of Human Services; Newton County facility.

(1) The Department of Finance and Administration, for and on behalf of the Department of Human Services and the State of Mississippi, may enter into a purchase contract, a lease-purchase agreement or other similar contract for the acquisition of land, buildings or equipment that would be suitable for use by the Department of Human Services in providing housing and facilities for youth under its jurisdiction regardless of the ages of such youths and that would assist the Department of Human Services in the performance of its duties under Chapter 27, Title 43, Mississippi Code of 1972. Before entering into any such contract or agreement, the Department of Finance and Administration must first demonstrate to the Public Procurement Review Board satisfactory evidence that the contract or agreement would be economically advantageous to the Department of Human Services.

(2) Acquisition of the property described in subsection (1) of this section shall be made only as provided in subsection (3) and upon legislative approval or upon approval of the State Bond Commission in accordance with the manner and procedure prescribed in Section 27-104-107.

(3) If Newton County is selected as a site to house a facility under this section, the governing authorities of any municipality in which all or part of the facility is to be located and the Board of Supervisors of Newton County shall adopt resolutions spread on their minutes requesting the location of the facility in such municipality and the county. If such resolutions are adopted, the qualified electors of the municipality, if all or part of the facility is to be located in a municipality, shall vote in an election to be set by the governing authorities to determine if a facility shall be sited. If a majority of the qualified electors voting in the election vote in favor of siting a facility, a second election set by the board of supervisors shall be held in the county. If a majority of the qualified electors of the county voting in the election vote in favor of siting a facility, a facility shall be sited. If a majority of the qualified electors of the municipality voting in the election vote against siting a facility, a second election shall not be held in the county and a facility shall not be sited.

SOURCES: Laws, 1994, ch. 587, § 1, eff from and after passage (approved April 8, 1994).

§ 43-27-37. Creation of Statewide Juvenile Work Program.

There is created in the Department of Human Services, Division of Youth Services, a Statewide Juvenile Work Program under the direction of a statewide coordinator. The statewide coordinator shall assist the youth court judges in implementing and administering the Juvenile Work Program as established under this section. The statewide coordinator shall establish standards and guidelines for juvenile work programs.

SOURCES: Laws, 1997, ch. 563, § 1, eff from and after July 1, 1997.

Cross References — Youth court law, see §§ 43-21-101 et seq.
Disposition alternatives in delinquency cases, see § 43-21-605.

§ 43-27-39. Use of Columbia Training School as secure training school for juvenile delinquents to be discontinued; all youth adjudicated to training school to be housed at Oakley Training School.

(1) The purpose of this section is to ensure that Mississippi's juvenile justice system is cost-efficient and effective at reducing juvenile crime and to create a continuum of options for Mississippi's youth court judges so that they are better equipped to protect our communities and to care for our children.

(2) The Columbia Training School shall no longer operate as a secure training school for juvenile delinquents. All youth, both male and female, committed to the custody of the Department of Human Services and adjudicated to training school shall be housed at the Oakley Youth Development Center. The Oakley Youth Development Center shall provide gender-specific treatment for youth who are adjudicated delinquent.

(3) Any portion of Columbia Training School property and facilities described in Section 1 of Chapter 553, Laws of 2012, may be conveyed or transferred to the Board of Supervisors of Marion County, Mississippi.

SOURCES: Laws, 2008, ch. 555, § 1; Laws, 2010, ch. 526, § 2; Laws, 2010, ch. 554, § 7; Laws, 2012, ch. 553, § 2, eff from and after passage (approved May 22, 2012.)

Joint Legislative Committee Note — Section 2 of ch. 526, Laws of 2010, effective from and after passage (approved Apr. 14, 2010), amended this section. Section 7 of ch. 554, Laws of 2010, effective from and after July 1, 2011, also amended this section. As set out above, this section reflects the language of Section 7 of ch. 554, Laws of 2010, which contains language that specifically provides that it supersedes § 43-27-39 as amended by Laws of 2010, ch. 526.

Editor's Note — Laws of 2009, ch. 561, § 7, provides:

"SECTION 7. (1) The Department of Finance and Administration, acting on behalf of the Mississippi Department of Human Services, being in exclusive control of all lands, buildings and other real and personal property now belonging to or assigned to the use and benefit or under the control of the Columbia Training School (formerly known as the Mississippi Industrial and Training School), is authorized to convey to the Columbia-Marion County Airport Board, a public entity created by joint resolution of Marion County, Mississippi, and the City of Columbia, Mississippi, adopted April 8, 1960, a tract of land that has been utilized as the Columbia-Marion County Airport for approximately sixty (60) years, the tract of land being more particularly described as follows:

"The NE ¼; the E ½ of the NW ¼; the NE ¼ of the SW ¼; and the N ½ of the SE ¼; all in Section 21, Township 4 North, Range 18 West, Marion County, Mississippi, totaling 360 acres.

"(2) It is expressly provided that the conveyance authorized under this section is to be subject to, and there is excepted from the warranty hereof, the following:

"(a) Any and all prior valid reservations or conveyances of oil, gas and other minerals in, on and under the property; and

"(b) Any and all easements, rights-of-way, restrictive covenants or building restrictions of record pertaining to the property."

Laws of 2010, ch. 526, § 1, provides:

"SECTION 1. (1) The Department of Finance and Administration, acting on behalf of the Department of Human Services, is authorized to lease certain real property located on the Columbia Training School campus in the City of Columbia, Marion County, Mississippi, being more particularly described as follows:

"A parcel in Marion County, Mississippi, containing approximately 214 acres located within the City of Columbia at the North East corner of the intersection of Hwy. 44 and National Guard Road being more particularly described as follows:

"Commencing at the South West corner of Section 34, T4N, R18W, thence run N 00°37′10.95″ W for a distance of 973.00 feet; thence run N 89°29′39.93″ E for a distance of 43.53 feet to a point being 50 feet East of the center line of Hwy. 44; also being the POINT OF BEGINNING of said parcel, thence run N 89°33′52.61″ E for a distance of 394.66 feet; thence run S 00°00′ E for a distance of 244.75 feet; thence run S 90°00′ E for a distance of 869.36 feet; thence run N 58°56′17.10″ E for a distance of 636.66 feet; thence run N 45°00′ E for a distance of 1,776.45 feet; thence run N 00°00′ E for a distance of 510.0 feet; thence run N 90°00′ W for a distance of 493.36 feet; thence run N 00°24′31.67″ E for a distance of 1,920.83 feet to a point on the South 50 foot right-of-way line of Hwy. 44; then follow the 50 foot right-of-way line of Hwy. 44 in a South-westerly direction. From said point thence run S 83°50′0.64″ W for a distance of 541.68 feet; thence run along a counter-clock-wise curve for an arc distance of 209.59 feet and having a radius of 1,450 feet and a chord bearing and distance of S 77°03′30.84″ W for a distance of 209.41 feet; thence run S 72°55′03.62″ W for a distance of 1,220.06 feet; thence run along a counter-clock-wise curve for an arc distance of 650.21 feet and having a radius of 520.0 feet and a chord bearing and distance of S 37°05′46.76″ W for a distance of 608.67 feet; thence run S 01°16′26.9″ W for a distance of 185.67 feet; then continue following the 50 foot right-of-way line of Hwy. 44 in a Southerly direction run S 00°17′16.91″ E for a distance of 919.44 feet; thence run S 00°30′20.96″ E for a distance of 1,673.63 feet back to the POINT OF BEGINNING.

"(2) Money derived in the lease of the real property described in subsection (1) shall be deposited into the State General Fund.

Laws of 2012, ch. 553, § 1, as amended by Laws of 2013, ch. 516, § 2, provides:

"SECTION 1. (1) After consultation with the chairmen of the Senate and House Public Property Committees, the Department of Finance and Administration, acting on behalf of the Mississippi Department of Human Services and the State of Mississippi, is authorized to convey and transfer to the Board of Supervisors of Marion County, Mississippi, upon approval of the Governor and the Secretary of State, certain real property and any improvements thereon, located at Columbia Training School, in Columbia, Marion County, Mississippi, containing approximately 214 acres located within the City of Columbia at the North East corner of the intersection of Highway 44 and National Guard Road being more particularly described as follows:

"North ½ of Southwest ¼ and South ½ of Northwest ¼, all being in Section 34, Township 4 North, Range 18 West, Marion County, Mississippi, and containing 160 acres more or less.

"(2) The State of Mississippi shall retain all mineral rights to the real property donated under this section."

Laws of 2013, ch. 516, s. 3, provides:

"SECTION 3. The real property conveyed under Sections 1 and 2 of this act [Ch. 516, Laws of 2013. Section 1 is noted under § 43-1-2. Section 2 is noted under § 43-27-39.] shall be conveyed to the respective recipients without any assumption of liability or financial responsibility by the State of Mississippi for any known or unknown environmental defects contained thereon. The entities acquiring the properties indemnifies the State of Mississippi upon receipt of said properties. However, the Marion County Board of Supervisors, upon receipt of the deed of title to the real property described in Sections 1 and 2 of this act shall have the authority to harvest and sell any timber located on those parcels of real property transferred under those sections and shall use the revenue generated from such sale or sales to fund the costs associated with removal and containment of any environmental defects located thereon. Any revenue remaining from the sale of timber after all environmental clean up cost have been paid, shall be deposited into the general fund treasury of Marion County to be expended for any and all purposes deemed necessary by the board of supervisors."

SERVICES AND CARE FOR CERTAIN CHILDREN AND YOUTH IN CUSTODY OF OR UNDER THE SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES

SEC.

43-27-101. Definitions applicable to Sections 43-27-101 and 43-27-103.
43-27-103. Development of system of services for children in custody of or under supervision of Department of Human Services; services that may be provided.
43-27-105. Funding for placement resources.
43-27-107. Qualifications of family protection specialists; status as state service employees; time-limited employee positions [Repealed effective July 1, 2019].
43-27-109. Employment of additional family protection specialists, youth counselors and clerical staff.
43-27-111. Supervision of county youth services workers by department; coordination with state workers.
43-27-113. Law enforcement assistance in department investigations of child abuse or neglect.
43-27-115. Program managers for department regions; duties; department to develop agreements with other service entities.
43-27-117. Online automated child welfare information system.
43-27-119. Joint task force to research when court decisions should be appealed; protocol.
43-27-121. Child Welfare Enhancement Fund.

§ 43-27-101. Definitions applicable to Sections 43-27-101 and 43-27-103.

For purposes of Sections 43-27-101 and 43-27-103, the following words shall have the meanings ascribed in this section, unless the context requires otherwise:

(a) "Child or youth in the custody of the Department of Human Services" means an individual:

(i) Who has not yet reached his eighteenth birthday;

(ii) Who has been legally placed in the custody of the Department of Human Services by the youth court and for whom custody with the

Department of Human Services was not sought by the parents or legal custodians or guardians for the parents' or legal custodians' or guardians' legal responsibilities to relieve themselves of the responsibility for paying for treatment for a child or youth; and

(iii) Who is unable to be maintained with the family or legal guardians or custodians due to his or her need for specialized care.

(b) "Child or youth under the supervision of the Department of Human Services" means an individual:

(i) Who has not yet reached his eighteenth birthday; and

(ii) Who has been referred for abuse or neglect and for whom a case has been opened and is active in the Division of Family and Children's Services of the department.

(c) "Plan of care" means a written plan of services needed to be provided for a child or youth and his or her family in order to provide the special care or services required.

(d) "Special needs crisis" means conduct or behavioral problems of such a severe nature and level that family or parental violence, abuse, and/or neglect pose an imminent threat or are present.

(e) "Specialized care" means:

(i) "Self care," which means the ability to provide, sustain and protect himself or herself at a level appropriate to his or her age;

(ii) "Interpersonal relationships," which means the ability to build and maintain satisfactory relationships with peers and adults;

(iii) "Family life," which means the capacity to live in a family or family-type environment;

(iv) "Self direction," which means the child's ability to control his or her behavior and to make decisions in a manner appropriate to his or her age;

(v) "Education," which means the ability to learn social and intellectual skill from teachers in an available educational setting.

(f) "Special needs child" means a child with a variety of handicapping conditions or disabilities, including emotional or severely emotional disorders. These conditions or disabilities present the need for special medical attention, supervision and therapy on a very regimented basis.

SOURCES: Laws, 1994, ch. 649, § 17, eff from and after July 1, 1994.

Cross References — Youth court law generally, see §§ 43-21-101 et seq.

§ 43-27-103. Development of system of services for children in custody of or under supervision of Department of Human Services; services that may be provided.

(1) Sections 43-27-101 and 43-27-103 shall enable the development by the Department of Human Services of a system of services for children or youth in the custody of or under the supervision of the Department of Human Services, if funds are appropriated to the department for that purpose. The system of

services may consist of emergency response services, an early intervention and treatment unit, respite care, crisis nurseries, specialized outpatient or inpatient treatment services, special needs foster care, therapeutic foster care, emergency foster homes, and Medicaid targeted case management for abused and neglected children and youth as well as children adjudicated delinquent or in need of supervision. Any of these services that are provided shall be arranged by and coordinated through the Department of Human Services, and the department may contract with public or private agencies or entities to provide any of the services or may provide any of the services itself. All of the services shall be provided in facilities that meet the standards set by the Department of Human Services for the particular type of facility involved. None of the services provided shall duplicate existing services except where there is a documented need for expansion of the services.

(2) A description of the services that may be provided under Sections 43-27-101 and 43-27-103 are as follows:

(a) "Emergency response services" means services to respond to children or youth in severe crisis and include:

(i) Emergency single point phone lines;

(ii) Crisis care coordinators staffing shifts that enable twenty-four-hour per day response as "front line" professionals when crisis calls are received, assist with decision-making, family support, initiate plan of action and remain "on call" for the first seventy-two (72) hours for other service professionals to get in place and insure development of a plan of care;

(iii) Acute care/emergency medical response through contracted services with up to five (5) regional hospitals providing emergency room services and hospitalization for up to seventy-two (72) hours with a maximum of One Hundred Dollars ($100.00) per day;

(iv) Case managers;

(v) Respite services; and

(vi) Assessment services contracted with social workers, psychologists, psychiatrists and other health professionals.

(b) "Early intervention and treatment unit" means a unique, nonhospital crisis service in a residential context that is able to provide the level of support and intervention needed to resolve the crisis and as an alternative to hospitalization. This unit shall provide specialized assessment, including a variety of treatment options and services to best intervene in a child or youth's crisis, and provide an appropriate plan for further services upon returning to the home and community. Staff-to-child or youth ratio shall be high, with multidisciplinary, specialized services for up to six (6) children or youths at one (1) time, and with the maximum assessment and treatment planning and services being ninety (90) days for most children or youths.

(c) "Respite care" means planned temporary care for a period of time ranging from a few hours within a twenty-four-hour period to an overnight or weekend stay to a maximum of ten (10) days. Care may be provided in-home or out-of-home with trained respite parents or counselors and is designed to provide a planned break for the parents from the caretaking role with the child.

(d) "Crisis nurseries" means a program providing therapeutic nursery treatment services to preschool aged children who as preschoolers demonstrate significant behavioral or emotional disorders. These services shall be to therapeutically address developmental and emotional behavioral difficulties through direct intervention with the child in a nursery school environment and to intervene with parents to provide education, support and therapeutic services.

(e) "Specialized outpatient or inpatient treatment services," such as sex offender treatment, means specialized treatment for perpetrators of sexual offenses with children.

(f) "Special needs foster care" means foster care for those children with a variety of handicapping conditions or disabilities, including serious emotional disturbance.

(g) "Therapeutic foster care" means residential mental health services provided to children and adolescents in a family setting, utilizing specially trained foster parents. Therapeutic foster care essentially involves the following features:

(i) Placement with foster parents who have been carefully selected by knowledgeable, well-trained mental health and social service professionals to work with children with an emotional disturbance;

(ii) Provision of special training to the foster parents to assist them in working with children with an emotional disturbance;

(iii) Low staff-to-child ratio, allowing the therapeutic staff to work very closely with each child, the foster parents and the biological parents, if available;

(iv) Creation of a support system among these specially trained foster parents; and

(v) Payment of a special foster care payment to the foster parents.

(h) "Emergency foster homes" means those homes used on a short-term basis for (i) children who are temporarily removed from the home in response to a crisis situation, or (ii) youth who exhibit special behavioral or emotional problems for whom removal from the existing home situation is necessary. In some cases they may provide an emergency placement for infants and toddlers for whom no regular foster home is available, rather than placement into an emergency shelter where older and larger groups of children are placed. Foster parents are trained to deal with the special needs of children placed in these emergency homes.

(i) "Medicaid targeted case management" means activities that are related to assuring the completion of proper client evaluations; arranging and supporting treatment plans, monitoring services, coordinating service delivery and other related actions.

SOURCES: Laws, 1994, ch. 649, § 18, eff from and after July 1, 1994.

§ 43-27-105. Funding for placement resources.

Funding for the placement resources authorized in Sections 43-27-101 and 43-27-103 shall be used to match appropriate federal funds.

SOURCES: Laws, 1994, ch. 649, § 19, eff from and after July 1, 1994.

§ 43-27-107. Qualifications of family protection specialists; status as state service employees; time-limited employee positions [Repealed effective July 1, 2019].

The Department of Human Services is authorized to set the qualifications necessary for all family protection specialists employed by the department, which shall at a minimum require that the applicant possess a baccalaureate degree in social work from a college or university accredited by the Council on Social Work Education or Southern Association of Colleges and Schools, unless the person was licensed as a social worker before September 1, 1994, pursuant to Section 73-53-7, Mississippi Code of 1972.

The qualifications for employment of a family protection specialist at the senior, advanced and supervisory grades shall require, in addition to those required of a family protection specialist, state licensure as a social worker.

The department shall not be required to go through the State Personnel Board or use the qualifications set by the Personnel Board in employing any family protection specialists for the department. All family protection specialists employed by the department shall be state service employees from the date of their employment with the department; however, to carry out its responsibilities, the department may use any available federal funds to employ such additional family protection specialists as it can employ in time-limited positions. All social worker positions existing before July 1, 1998, will remain state service.

This section shall stand repealed on July 1, 2019.

SOURCES: Laws, 1994, ch. 649, § 20; Laws, 1998, ch. 330, § 1; Laws, 2000, ch. 301, § 14; Laws, 2000, ch. 565, § 1; Laws, 2006, ch. 600, § 7; Laws, 2009, ch. 364, § 2; Laws, 2010, ch. 461, § 2; Laws, 2012, ch. 470, § 7; Laws, 2015, ch. 403, § 7, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 14 of ch. 301, Laws of 2000, effective from and after July 1, 1999, amended this section. Section 1 of ch. 565, Laws of 2000, effective from and after passage (approved May 20, 2000), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 565, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — Laws of 2000, ch. 301, was Senate Bill 2143, 1999 Regular Session, and originally passed both Houses of the Legislature on March 30, 1999. The Governor vetoed Senate Bill 2143 on April 23, 1999. The veto was overridden by the State Senate on February 16, 2000, and by the State House of Representatives on February 17, 2000.

Amendment Notes — The 2015 amendment extended the repealer provision in the last paragraph, from "July 1, 2015" to "July 1, 2019."

ATTORNEY GENERAL OPINIONS

State law does not require that only licensed social workers perform investigations of neglect and abuse. Alfonso, Jan. 7, 2004, A.G. Op. 03-0586.

§ 43-27-109. Employment of additional family protection specialists, youth counselors and clerical staff.

The Department of Human Services may employ a sufficient number of new family protection specialists, youth counselors and clerical staff to reduce the caseload sizes for social workers and youth counselors of the department and to reduce the workload on clerical staff, if funds are appropriated to the department for that purpose.

SOURCES: Laws, 1994, ch. 649, § 21; Laws, 2004, ch. 489, § 6; Laws, 2006, ch. 600, § 8, eff from and after July 1, 2006.

§ 43-27-111. Supervision of county youth services workers by department; coordination with state workers.

The Department of Human Services shall exercise jurisdiction and supervision over youth services workers employed by the counties, if funds are appropriated to the department for that purpose, and the duties of those workers shall be coordinated with the duties of youth services workers employed by the department.

SOURCES: Laws, 1994, ch. 649, § 22, eff from and after July 1, 1994.

§ 43-27-113. Law enforcement assistance in department investigations of child abuse or neglect.

In any investigation by the Department of Human Services of a report made under Section 43-21-101 et seq. of the abuse or neglect of a child as defined in Section 43-21-105, the department may request the appropriate law enforcement officer with jurisdiction to accompany the department in its investigation, and in such cases the law enforcement officer shall comply with such request.

SOURCES: Laws, 1994, ch. 649, § 23, eff from and after July 1, 1994.

JUDICIAL DECISIONS

1. Custodial interrogation.

Defendant's convictions for felonious child abuse were appropriate because her statements to a family protection specialist were admissible since defendant was not subjected to custodial interrogation. Defendant was questioned by the specialist, and not the law enforcement officers who accompanied her; during the questioning, defendant was not under arrest, she was in her own home and free to terminate the interview; and nothing in the testimony of defendant or the specialist indicated that defendant believed that she was going to jail rather than temporarily being detained. Clark v. State, 40 So. 3d 531 (Miss. 2010).

Defendant's convictions for felonious child abuse were appropriate because her statements to a family protection specialist were admissible since defendant was not subjected to custodial interrogation. Defendant was questioned by the specialist, and not the law enforcement officers who accompanied her; during the questioning, defendant was not under arrest, she was in her own home and free to terminate the interview; and nothing in the testimony of defendant or the specialist indicated that defendant believed that she was going to jail rather than temporarily being detained. Clark v. State, 40 So. 3d 531 (Miss. 2010).

§ 43-27-115. Program managers for department regions; duties; department to develop agreements with other service entities.

The Department of Human Services is authorized to employ one (1) program manager for each department region, if funds are appropriated to the department for that purpose, whose duties shall be to develop an ongoing public education program to inform Mississippi citizens about the needs of the state's children, youth and families, the work of the department in addressing these needs and how citizens might become involved. The Department of Human Services shall develop formal agreements of cooperation and protocol between the department and other providers of services to children and families including school districts, hospitals, law enforcement agencies, mental health centers and others.

SOURCES: Laws, 1994, ch. 649, § 24, eff from and after July 1, 1994.

§ 43-27-117. Online automated child welfare information system.

The Department of Human Services is authorized to establish an online automated child welfare information system, if funds are appropriated to the department for that purpose, to give the department the capability to supply foster care, adoption and child abuse and neglect data to the federal Department of Health and Human Services in a specified format as required, and to help the department in tracking child abuse and neglect referrals and the number of children affected in those referrals.

SOURCES: Laws, 1994, ch. 649, § 25, eff from and after July 1, 1994.

§ 43-27-119. Joint task force to research when court decisions should be appealed; protocol.

There is created a joint task force of the Department of Human Services and the Attorney General's Office consisting of the executive director of the department, the Attorney General, any staff persons designated by the executive director and the Attorney General, and any other persons designated by the executive director and the Attorney General. The joint task force shall research the issue of when the department should consider appealing court decisions that are contrary to the department's recommendations in child welfare and juvenile offender cases, and shall issue a protocol for determining the type of cases that should be appealed. The protocol shall establish the following:

(a) General guidelines to be considered for appealing a case;

(b) The type of information from case records and court records that should be entered into the appeal file; and

(c) The individuals who have authority to set the appeals process in motion and who can make final decisions about whether an appeal should be filed or not.

Not later than November 30, 1994, the joint task force shall complete its research, issue the protocol, and make recommendations to the Legislature for any administrative and legislative action necessary to properly and sufficiently address this issue.

SOURCES: Laws, 1994, ch. 649, § 26, eff from and after July 1, 1994.

§ 43-27-121. Child Welfare Enhancement Fund.

There is created in the State Treasury a special fund to be known as the "Child Welfare Enhancement Fund," which shall consist of such monies as provided by law to be deposited in the fund. The fund shall be administered by the Department of Human Services upon appropriations of the monies in the fund by the Legislature. The monies in the fund shall be expended to enhance the state's services for children and youth, including, but not limited to, implementation of the recommendations in the November 1, 1992, report by the Child Welfare League of America.

SOURCES: Laws, 1994, ch. 649, § 27, eff from and after July 1, 1994.

IMPROVEMENTS TO JUVENILE CORRECTIONAL FACILITIES

SEC.
43-27-201. Division of Youth Services to establish, maintain and operate Adolescent Opportunity Program.
43-27-203. Youth Challenge Program; implementation and administration of program by National Guard; issuance of diplomas to participants meeting GED requirements.
43-27-205. Local Juvenile Detention Facility Construction, Renovation and Repair Fund; source of funds; purpose of Fund.
43-27-207. Department of Finance and Administration to issue general obligation bonds to provide funds for construction, renovation, repairing, remodeling, equipping, furnishing, adding to or improving juvenile detention facilities; 1994 State Juvenile Detention Facility Construction, Repair and Renovation Fund.
43-27-209. Payment of principal of and interest on bonds.
43-27-211. Bonds to be signed by State Bond Commission; bonds to be issued as provided in Registered Bond Act.

43-27-213. Bonds and interest coupons to be negotiable instruments; compliance with Uniform Commercial Code not required.
43-27-215. Bonds to be issued by State Bond Commission; procedures for issuance.
43-27-217. Full faith and credit of State irrevocably pledged.
43-27-219. Issuance of warrants to pay principal and interest on bonds.
43-27-221. Deposit of proceeds of bond sales into Juvenile Justice Assistance Fund.
43-27-223. Further proceedings not required to issue bonds.
43-27-225. Validation of bonds.
43-27-227. Actions to protect and enforce rights of bond holders.
43-27-229. Bonds as legal investments.
43-27-231. Bonds and income therefrom exempt from taxation.
43-27-233. Sections 43-27-207 through 43-27-233 as full and complete authority for exercise of powers granted.

§ 43-27-201. Division of Youth Services to establish, maintain and operate Adolescent Opportunity Program.

(1) The purpose of this section is to outline and structure a long-range proposal in addition to certain immediate objectives for improvements in the juvenile facilities of the Division of Youth Services of the Mississippi Department of Human Services in order to provide modern and efficient rehabilitation facilities for juvenile offenders in Mississippi, who are committing an increasing percentage of serious and violent crimes.

(2) The Division of Youth Services shall establish, maintain and operate an Adolescent Opportunity Program (AOP) throughout the state, which may include non-Medicaid assistance eligible juveniles. Beginning July 1, 2016, subject to availability of funds appropriated therefor by the Legislature, AOP professional services, salaries, facility offices, meeting rooms and related supplies and equipment may be provided through contract with local mental health or other nonprofit community organizations. Each AOP must incorporate evidence-based practices and positive behavioral intervention that includes two (2) or more of the following elements: academic, tutoring, literacy, mentoring, vocational training, substance abuse treatment, family counseling and anger management. Programs may include, but shall not be limited to, after school and weekend programs, job readiness programs, home detention programs, community service conflict resolution programs, restitution and community service.

SOURCES: Laws, 1994, ch. 652, § 1; Laws, 1997, ch. 526, § 1; Laws, 2005, ch. 471, § 7; Laws, 2006, ch. 539, § 6; Laws, 2014, ch. 398, § 12; Laws, 2015, ch. 330, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of paragraph (a) in subsection (2). The words "Bureau of Building, Lands and Real Property Management" were changed to "Bureau of Building, Grounds and Real Property Management". The Joint Committee ratified the correction at its May 20, 1998, meeting.

Editor's Note — Section 43-27-39 provides that the Columbia Training School, referred to in subsection (5) of this section, will no longer operate as a secure training school for juvenile delinquents and provides limited uses of the training school property.

Amendment Notes — The 2014 amendment substituted "High School Equivalency Diploma" for "GED" following "have completed the" in the first sentence in (6).

The 2015 amendment rewrote the section to require the Division of Youth Services to establish and operate an Adolescent Opportunity Program instead of adolescent offender programs.

Cross References — Use of Columbia Training School property, see § 43-27-39.

§ 43-27-203. Youth Challenge Program; implementation and administration of program by National Guard; issuance of diplomas to participants meeting GED requirements.

(1) There is created under the Mississippi National Guard a program to be known as the "Youth Challenge Program." The program shall be an interdiction program designed for children determined to be "at risk" by the National Guard.

(2) The Mississippi National Guard shall implement and administer the Youth Challenge Program and shall promulgate rules and regulations concerning the administration of the program. The National Guard shall prepare written guidelines concerning the nomination and selection process of participants in the program, and such guidelines shall include a list of the factors considered in the selection process.

(3) Participation in the Youth Challenge Program shall be on a voluntary basis. No child may be sentenced by any court to participate in the program; however, a youth court judge may refer the program to a child when, under his determination, such program would be sufficient to meet the needs of the child.

(4) The Mississippi National Guard, under the auspices of the Challenge Academy, may award an adult high school diploma to each participant who meets the requirements for a High School Equivalency Diploma equivalent under the policies and guidelines of the GED Testing Service of the American Council on Education and any other minimum academic requirements prescribed by the National Guard and Challenge Academy for graduation from the Youth Challenge Program. Participants in the program who do not meet the minimum academic requirements may be awarded a special certificate of attendance. The Mississippi National Guard and the Challenge Academy shall establish rules and regulations for awarding the adult high school diploma and shall prescribe the form for such diploma and the certificate of attendance.

(5) The Mississippi National Guard may accept any available funds that may be used to defray the expenses of the program, including, but not limited to, federal funding, public or private funds and any funds that may be appropriated by the Legislature for that purpose.

SOURCES: Laws, 1994, ch. 652, § 2; Laws, 1999, ch. 353, § 1; Laws, 2014, ch. 398, § 13, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "High School Equivalency Diploma" for "general educational development (GED)" preceding "equivalent under the policies and guidelines" in the first sentence in (4).

§ 43-27-205. Local Juvenile Detention Facility Construction, Renovation and Repair Fund; source of funds; purpose of Fund.

(1) There is established in the State Treasury a fund to be known as the "Local Juvenile Detention Facility Construction, Renovation and Repair Fund" which shall be administered by the Department of Public Safety. Such fund shall be used for the purposes established in this section. The Department of Public Safety shall promulgate regulations for the administration of the fund including applications for grants, the awarding of grants and any necessary forms therefor.

(2) The fund shall consist of any monies appropriated by the Legislature, monies from bonds issued for the purposes described in Section 43-27-207(2)(a) and issued under Sections 43-27-207 through 43-27-233, monies provided by any federal or state grants or provided from any public or private source. Any interest which accrues in the fund shall remain in the fund and at the end of the fiscal year any monies remaining in the fund shall not lapse into the General Fund but shall remain in the fund.

(3) The fund shall be used for the following purposes:

(a) To provide grants to local governmental units to construct, repair, remodel, equip, furnish, add to, improve and maintain juvenile detention facilities. Grants shall be awarded on a proportionate basis based on the population of the local governmental unit. Counties and municipalities are encouraged to enter into interlocal agreements and regional agreements to receive grants. Any area which uses this fund for the purposes provided herein shall have a minimum population of twenty-five thousand (25,000) persons residing in the area to be served by a facility.

(b) To reduce existing indebtedness related to juvenile detention facilities of units of government with existing facilities, proposed facilities or facilities under construction.

(4) Any grants made under the provisions of this section shall be made within eighteen (18) months of the effective date of Sections 43-27-201 through 43-27-233.

SOURCES: Laws, 1994, ch. 652, § 3, eff from and after passage (approved April 8, 1994).

§ 43-27-207. Department of Finance and Administration to issue general obligation bonds to provide funds for construction, renovation, repairing, remodeling, equipping, furnishing, adding to or improving juvenile detention facilities; 1994 State Juvenile Detention Facility Construction, Repair and Renovation Fund.

(1) The Department of Finance and Administration, at one (1) time or from time to time, may declare by resolution the necessity for issuance of general obligation bonds of the State of Mississippi to provide funds for

construction, repairing, remodeling, equipping, furnishing, adding to, improving and maintaining juvenile detention facilities which shall include temporary and permanent facilities for housing juvenile offenders, a wilderness camp or any other facility used for juvenile detention. Upon the adoption of a resolution by the Department of Finance and Administration, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by this section, the department shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of such resolution, the State Bond Commission, in its discretion, may act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The amount of bonds issued under Sections 43-27-201 through 43-27-233 shall not exceed Twenty-one Million One Hundred Fifty Thousand Dollars ($21,150,000.00) to provide funds for the purposes hereinabove set forth and to issue and sell bonds in the amount specified.

(2) Out of the total amount of bonds authorized to be issued, funds shall be allocated, except as otherwise provided in subsections (3) and (4), as follows:

(a) LOCAL JUVENILE DETENTION FACILITY CONSTRUCTION, RENOVATION AND REPAIR

Construction, repair, remodeling, equipping, furnishing, adding to, improving and maintaining juvenile detention facilities......$ 3,650,000.00

(b) OAKLEY AND COLUMBIA TRAINING SCHOOLS

Construction of a one-hundred-fifty-bed, stand alone, medium security juvenile correctional facility for habitual violent male offenders, construction of a one-hundred-bed minimum security juvenile facility for female offenders, an additional, stand alone, fifteen-bed maximum security juvenile correctional facility for female offenders, construction of staff housing facilities, treatment facilities and any other facilities and related construction deemed appropriate by the Bureau of Building, Grounds and Real Property Management..$15,500,000.00

(c) OAKLEY AND COLUMBIA TRAINING SCHOOLS

Renovation and repair of infrastructure and facilities, including replacement or repair of furnishings and equipment...................$ 2,000,000.00

TOTAL...$21,150,000.00

(3) It is expressly provided, however, that if any funds of the Fifteen Million Five Hundred Thousand Dollars ($15,500,000.00) provided for Oakley and Columbia Training Schools in subsection (2)(b) of this section remain after the completion of such project, such remaining funds shall be used for renovation and repair at Oakley and Columbia Training Schools in addition to the funds provided in subsection (2)(c) of this section.

(4) A special fund, to be designated the "1994 State Juvenile Detention Facility Construction, Repair and Renovation Fund," is created within the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state, and investment earnings on amounts in the fund shall be deposited into

such fund. The expenditure of monies deposited into the fund shall be under the direction of the Department of Finance and Administration, and such funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration. Monies deposited into such fund shall be allocated and disbursed according to subsections (2)(b) and (c) of this section.

SOURCES: Laws, 1994, ch. 652, § 4; Laws, 1997, ch. 494, § 1; Laws, 1999, ch. 522, § 91, eff from and after passage (approved Apr. 15, 1999.)

ATTORNEY GENERAL OPINIONS

Section 43-27-209 neither mandates the Department of Public Safety to include, nor prohibits it from including, temporary buildings in the grants established in Section 43-27-207 for construction and maintenance of local detention facilities, so long as the facilities meet the regulations set by the department. O'Cain, January 24, 1995, A.G. Op. #95-0010.

RESEARCH REFERENCES

ALR. Authority of state, municipality, or other governmental entity to accept late bids for public works contracts. 49 A.L.R.5th 747.

§ 43-27-209. Payment of principal of and interest on bonds.

The principal of and interest on the bonds authorized under Sections 43-27-207 through 43-27-233 shall be payable in the manner provided in this section. Such bonds shall bear such date or dates, be in such denomination or denominations, bear interest at such rate or rates not exceeding the limits set forth in Section 75-17-101, be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times not to exceed twenty (20) years from date of issue, be redeemable before maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as determined by resolution of the State Bond Commission.

SOURCES: Laws, 1994, ch. 652, § 5, eff from and after passage (approved April 8, 1994).

ATTORNEY GENERAL OPINIONS

Section 43-27-209 neither mandates the Department of Public Safety to include, nor prohibits it from including, temporary buildings in the grants established in Section 43-27-207 for construction and maintenance of local detention facilities, so long as the facilities meet the regulations set by the department. O'Cain, January 24, 1995, A.G. Op. #95-0010.

§ 43-27-211. Bonds to be signed by State Bond Commission; bonds to be issued as provided in Registered Bond Act.

The bonds authorized under Sections 43-27-207 through 43-27-233 shall be signed by the Chairman of the State Bond Commission, or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, attested by the Secretary of the State Bond Commission. The interest coupons, if any, to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever any such bonds shall have been signed by the officials designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers before the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until their delivery to the purchaser, or had been in office on the date such bonds may bear. However, notwithstanding anything in Sections 43-27-201 through 43-27-233 to the contrary, such bonds may be issued as provided in the Registered Bond Act of the State of Mississippi.

SOURCES: Laws, 1994, ch. 652, § 6, eff from and after passage (approved April 8, 1994).

§ 43-27-213. Bonds and interest coupons to be negotiable instruments; compliance with Uniform Commercial Code not required.

All bonds and interest coupons issued under the provisions of Sections 43-27-207 through 43-27-233 have all the qualities and incidents of negotiable instruments under the provisions of the Mississippi Uniform Commercial Code, and in exercising the powers granted by Sections 43-27-207 through 43-27-233, the State Bond Commission shall not be required to and need not comply with the provisions of the Mississippi Uniform Commercial Code.

SOURCES: Laws, 1994, ch. 652, § 7, eff from and after passage (approved April 8, 1994).

Cross References — Mississippi Uniform Commercial Code, Negotiable Instruments, see §§ 75-3-101 et seq.

§ 43-27-215. Bonds to be issued by State Bond Commission; procedures for issuance.

The State Bond Commission shall act as the issuing agent for the bonds authorized under Sections 43-27-207 through 43-27-233, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, pay all fees and costs incurred in such issuance and sale, and do all other things necessary and advisable in connection with the issuance and sale of the bonds. The State Bond Commission may pay the costs that are incident to the sale, issuance and delivery of the bonds authorized under Sections 43-27-207 through 43-27-233 from the proceeds derived from the sale of the bonds. The State Bond Commission shall sell such bonds on sealed bids at public sale, and for such price as it may determine to be for the best interest of the State of Mississippi, but no such sale may be made at a price less than par plus accrued interest to the date of delivery of the bonds to the purchaser. All interest accruing on such bonds so issued shall be payable semiannually or annually; however, the first interest payment may be for any period of not more than one (1) year.

Notice of the sale of any such bond shall be published at least one (1) time, not less than ten (10) days before the date of sale, and shall be so published in one or more newspapers published or having a general circulation in the City of Jackson, Mississippi, and in one or more other newspapers or financial journals with a national circulation, to be selected by the State Bond Commission.

The State Bond Commission, when issuing any bonds under the authority of Sections 43-27-207 through 43-27-233, may provide that the bonds, at the option of the State of Mississippi, may be called in for payment and redemption at the call price named therein and accrued interest on such date or dates named therein.

SOURCES: Laws, 1994, ch. 652, § 8, eff from and after passage (approved April 8, 1994).

§ 43-27-217. Full faith and credit of State irrevocably pledged.

The bonds issued under the provisions of Sections 43-27-207 through 43-27-233 are general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated. All such bonds shall contain recitals on their faces substantially covering the provisions of this section.

SOURCES: Laws, 1994, ch. 652, § 9, eff from and after passage (approved April 8, 1994).

§ 43-27-219. Issuance of warrants to pay principal and interest on bonds.

The State Treasurer is authorized to certify to the State Fiscal Officer the necessity for warrants, and the State Fiscal Officer is authorized and directed to issue such warrants, in such amounts as may be necessary to pay when due the principal of, premium, if any, and interest on, or the accredited value of, all bonds issued under Sections 43-27-207 through 43-27-233; and the State

Treasurer shall forward the necessary amount to the designated place or places of payment of such bonds in ample time to discharge such bonds, or the interest on the bonds, on their due dates.

SOURCES: Laws, 1994, ch. 652, § 10, eff from and after passage (approved April 8, 1994).

Editor's Note — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean Executive Director of the Department of Finance and Administration.

§ 43-27-221. Deposit of proceeds of bond sales into Juvenile Justice Assistance Fund.

Upon the issuance and sale of bonds under Sections 43-27-207 through 43-27-233, the State Bond Commission shall deposit the proceeds of any such sale or sales in a special fund created in the State Treasury to be known as the "Juvenile Justice Assistance Fund." The proceeds of such bonds shall be used solely for the purposes provided in Sections 43-27-207 through 43-27-233, including the costs incident to the issuance and sale of such bonds. The costs incident to the issuance and sale of such bonds shall be disbursed by warrant upon requisition of the State Bond Commission, signed by the chairman of the commission. The remaining moneys in the fund shall be expended solely under the direction of the Department of Finance and Administration under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds, and such funds shall be paid by the State Treasurer upon warrants issued by the State Fiscal Officer.

SOURCES: Laws, 1994, ch. 652, § 11, eff from and after passage (approved April 8, 1994).

Editor's Note — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean Executive Director of the Department of Finance and Administration.

§ 43-27-223. Further proceedings not required to issue bonds.

The bonds authorized under Sections 43-27-207 through 43-27-233 may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions and things that are specified or required by Sections 43-27-207 through 43-27-233. Any resolution providing for the issuance of bonds under Sections 43-27-207 through 43-27-233 shall become effective immediately upon its adoption by the State Bond Commission, and any such resolution may be adopted at any regular or special meeting of the State Bond Commission by a majority of its members.

SOURCES: Laws, 1994, ch. 652, § 12, eff from and after passage (approved April 8, 1994).

§ 43-27-225. Validation of bonds.

The bonds authorized under the authority of Sections 43-27-207 through 43-27-233 may be validated in the Chancery Court of the First Judicial District of Hinds County, Mississippi, in the manner and with the force and effect provided by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds. The notice to taxpayers required by such statutes shall be published in a newspaper published or having a general circulation in the City of Jackson, Mississippi.

SOURCES: Laws, 1994, ch. 652, § 13, eff from and after passage (approved April 8, 1994).

§ 43-27-227. Actions to protect and enforce rights of bond holders.

Any holder of bonds issued under Sections 43-27-207 through 43-27-233 or of any of the interest coupons pertaining to the bonds may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce all rights granted under Sections 43-27-207 through 43-27-233, or under such resolution, and may enforce and compel performance of all duties required by Sections 43-27-207 through 43-27-233 to be performed, in order to provide for the payment of bonds and interest on the bonds.

SOURCES: Laws, 1994, ch. 652, § 14, eff from and after passage (approved April 8, 1994).

§ 43-27-229. Bonds as legal investments.

All bonds issued under Sections 43-27-207 through 43-27-233 shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities that may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

SOURCES: Laws, 1994, ch. 652, § 15, eff from and after passage (approved April 8, 1994).

§ 43-27-231. Bonds and income therefrom exempt from taxation.

Bonds issued under Sections 43-27-207 through 43-27-233 and income from the bonds shall be exempt from all taxation in the State of Mississippi.

SOURCES: Laws, 1994, ch. 652, § 16, eff from and after passage (approved April 8, 1994).

§ 43-27-233. Sections 43-27-207 through 43-27-233 as full and complete authority for exercise of powers granted.

Sections 43-27-207 through 43-27-233 shall be deemed to be full and complete authority for the exercise of the powers granted, but Sections 43-27-207 through 43-27-233 shall not be deemed to repeal or to be in derogation of any existing law of this state.

SOURCES: Laws, 1994, ch. 652, § 17, eff from and after passage (approved April 8, 1994).

JUVENILE HEALTH RECOVERY STUDY

SEC.
43-27-301 through 43-27-307. Repealed.
43-27-309. Repeal of Sections 43-27-301 through 43-27-309.

§§ 43-27-301 through 43-27-307. Repealed.

Repealed by Laws, 1999, ch. 587, § 1, eff from and after July 1, 1999.

43-27-301. [Laws, 1999, ch. 587, § 1, eff from and after July 1, 1999.]

43-27-303. [Laws, 1999, ch. 587, § 2, eff from and after July 1, 1999.]

43-27-305. [Laws, 1999, ch. 587, § 3, eff from and after July 1, 1999.]

43-27-307. [Laws, 1999, ch. 587, § 4; Laws, 2000, ch. 547, § 6, eff from and after July 1, 2000.]

Editor's Note — For repeal of this chapter, see § 43-27-309.

Former § 43-27-301 was entitled "Purpose of review; eligibility of certain troubled children; findings and recommendations."

Former § 43-27-303 was entitled "Review to be conducted by Juvenile Health Recovery Advisory Board; board membership; organizational meeting."

Former § 43-27-305 was entitled "Board to study and make recommendations concerning juvenile health recovery programs and rescue centers; establishment of pilot programs from non-State appropriated sources authorized."

Former § 43-27-307 was entitled "Plan for comprehensive, multidisciplinary care, treatment and placement to be submitted by February 1, 2000; recommended rules and regulations for operation of Juvenile Health Recovery Program to be submitted by September 15, 2000."

§ 43-27-309. Repeal of Sections 43-27-301 through 43-27-309.

This chapter which establishes a Juvenile Health Recovery Review and a Juvenile Health Recovery Advisory Board are repealed from and after July 1, 2001.

SOURCES: Laws, 1999, ch. 587, § 5, eff from and after July 1, 1999.

AMER-I-CAN PILOT PROGRAM

SEC.
43-27-401. Amer-I-Can Program established; objectives; policies and procedures; funding.

§ 43-27-401. Amer-I-Can Program established; objectives; policies and procedures; funding.

(1) The Department of Human Services, Division of Youth Services, shall establish a pilot program to be known as the "Amer-I-Can Program." The program is designed for youths who have been committed to or are confined at the Oakley Youth Development Center. The objectives of this program are:

(a) To develop greater self-esteem, assume responsible attitudes and experience a restructuring of habits and conditioning processes;

(b) To develop an appreciation of family members and an understanding of the role family structure has in achieving successful living;

(c) To develop an understanding of the concept of community and collective responsibility;

(d) To develop a prowess in problem solving and decision making that will eliminate many of the difficulties that were encountered in past experiences;

(e) To develop skills in money management and financial stability, thus relieving pressures that have contributed to previous difficulties;

(f) To develop communication skills to better express thoughts and ideas while acquiring an understanding of and respect for the thoughts and ideas of others; and

(g) To acquire employment seeking and retention skills to improve chances of long-term, gainful employment.

(2) The Division of Youth Services shall develop policies and procedures to administer the program and shall choose which youths are eligible to participate in the program.

(3) The department may accept any funds, public or private, made available to it for the program.

SOURCES: Laws, 2001, ch. 580, § 1; Laws, 2005, ch. 471, § 8; Laws, 2010, ch. 554, § 8, eff from and after July 1, 2011.

CHAPTER 29

Persons with Disabilities

Sec.

43-29-1. Persons with disabilities.
43-29-3. Eligibility for assistance to the needy aged; eligibility for assistance to needy persons with disabilities.
43-29-5. Amount of assistance.
43-29-7. Application for assistance.
43-29-9. Investigation of applications.
43-29-11. Granting of assistance.
43-29-13. Payment for benefit of recipient.
43-29-15. Assistance not assignable.
43-29-17. Appeal to the State Department.
43-29-19. Periodic reconsideration and changes in amount of assistance.
43-29-21. No fees to be paid.
43-29-23. Fraudulent acts.
43-29-25. Recovery from the estate of recipient for false representation.
43-29-27. Limitation of chapter.
43-29-29. Disbursement of funds, how made.
43-29-31. Limitation of assistance and administrative cost.
43-29-33. Litigation.
43-29-35. Reservation of right to amend or repeal chapter.
43-29-37. Administration.
43-29-39. Funds.

§ 43-29-1. Persons with disabilities.

For the purpose of providing assistance for permanently totally disabled needy people under the age of (sixty-five) 65 years and over the age of (eighteen) 18 years who are unable to work, a statewide system of assistance is hereby established and shall be in effect in all political subdivisions of the state, to operate with due regard to varying conditions and cost of living, to be financed by state appropriations therefor, and to be administered by the state department of public welfare, as hereinafter provided.

SOURCES: Codes, 1942, § 7270; Laws, 1942, ch. 282, § 1; Laws, 1950, ch. 526, § 1.

Cross References — Power of the state board of health to establish programs concerning services to children with disabilities, see § 41-3-15.

Mandatory state supplemental payments to aged, blind and persons with disabilities, see §§ 43-1-31 through 43-1-37.

Old age assistance, see §§ 43-9-1 et seq.

Mississippi Disability Resource Commission, see § 43-30-1.

Poor persons, see §§ 43-31-1 et seq.

RESEARCH REFERENCES

ALR. Who is "qualified" handicapped person protected from employment discrimination under Rehabilitation Act of 1973 (29 USCS §§ 701 et seq.) and regulations promulgated thereunder. 80 A.L.R. Fed. 830.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 193-198.

§ 43-29-3. Eligibility for assistance to the needy aged; eligibility for assistance to needy persons with disabilities.

Assistance shall be given under this chapter to any person who qualifies under Section 43-29-1, and who:

(a) has resided in this state for one (1) year immediately preceding his application, and such residence shall not have been established solely or in part for the purpose of enabling the applicant to come within the provisions of this chapter;

(b) resides in the county in which application is made;

(c) has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;

(d) is not an inmate of or being maintained by any county, municipal, state, or national institution at the time of receiving assistance except as a patient in a public medical institution, or is not a patient in any institution for tuberculosis or mental diseases, or is not a patient in any medical institution as a result of having been diagnosed as having tuberculosis or psychosis; in the event the federal Social Security Act or other appropriate federal statutes are so amended as to permit funds appropriated by Congress to be used for assistance to disabled persons who are inmates of public institutions, then being an inmate of any such institution shall not disqualify any such person for assistance. An inmate of such an institution may, however, make application for such assistance but the assistance, if granted, shall not begin until after he ceases to be an inmate;

(e) has not made an assignment to transfer his property so as to render himself eligible for assistance under this chapter at any time within two (2) years immediately prior to the filing of an application for assistance pursuant to the provisions hereof.

SOURCES: Codes, 1942, § 7271; Laws, 1942, ch. 282, § 2; Laws, 1954, ch. 354; Laws, 1960, ch. 439, § 3.

Cross References — Disclosure of records of disbursements and payments of public assistance, see § 43-1-19.

Old age assistance, see § 43-9-7.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

JUDICIAL DECISIONS

1. In general.

Section 1402(b) of the Social Security Act of 1935, as amended (42 USCS § 1352(b)), which provides that the United States secretary of health, education, and welfare shall approve any state plan for the distribution of funds under federally assisted disability welfare programs except, among others, plans which impose citizenship requirements which exclude any citizen of the United States, does not authorize a state statutory provision denying general disability assistance to resident aliens who have not resided within the United States for a total of at least 15 years. Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

RESEARCH REFERENCES

ALR. Reimbursement of public for financial assistance to aged persons. 29 A.L.R.2d 731.

§ 43-29-5. Amount of assistance.

The amount of assistance, including vendor payments for medical care, which any recipient shall receive shall be determined by the welfare department with due regard to resources, income (except such income as may be disregarded as specified in the federal Social Security Act, as amended), and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations made by the state department.

SOURCES: Codes, 1942, § 7272; Laws, 1942, ch. 282, § 3; Laws, 1944, ch. 293, § 1; Laws, 1950, ch. 526, § 2; Laws, 1957, Ex Sess, ch. 21; Laws, 1960, ch. 441; Laws, 1962, ch. 561, § 1; Laws, 1962, 2d Ex Sess, ch. 34; Laws, 1968, ch. 562, § 8, eff from and after passage (approved July 30, 1968).

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

§ 43-29-7. Application for assistance.

Application for assistance under this chapter shall be made to the county welfare agent of the county in which the applicant resides. The application shall be made in writing or reduced to writing in the manner and upon the form prescribed by the state department. Such application shall contain such information as may be prescribed by the state department.

SOURCES: Codes, 1942, § 7273; Laws, 1942, ch. 282, § 4.

§ 43-29-9. Investigation of applications.

Whenever a county welfare agent receives an application for assistance under this chapter, an investigation and record shall promptly be made of the circumstances of the applicant to ascertain the facts supporting the application made under this chapter, and such other information as may be required by the rules of the state board. The county department and the state department shall have the power to conduct examinations, and the county board and such officers and employees as are designated by the state commissioner may also administer oaths and affirmation.

SOURCES: Codes, 1942, § 7274; Laws, 1942, ch. 282, § 5.

§ 43-29-11. Granting of assistance.

Upon the completion of the investigation, the county department shall determine in accordance with the rules and regulations of the State Department, whether the applicant is eligible for assistance under the provisions of this chapter, the amount of assistance he shall receive, and the date upon which such assistance shall begin.

It shall be the duty of the State Department insofar as is practicable to provide assistance to eligible persons, who, due to limitation of available funds have not been placed upon the assistance rolls, as soon as practicable after additional funds become available to the department and prior to making a general increase in assistance grants to persons already on said assistance rolls. Nothing in this section shall be construed to bar or limit any county department of public welfare from granting individual increases in the amount of assistance to recipients based upon their individual needs. The State Department shall, as soon as made possible by the availability of additional funds, take steps to eliminate all waiting lists.

SOURCES: Codes, 1942, § 7275; Laws, 1942, ch. 282, § 6.

Cross References — Disclosure of records of disbursements and payments of public assistance, see § 43-1-19.

§ 43-29-13. Payment for benefit of recipient.

If the recipient or applicant is found incapable of taking care of himself or his money, payments may be paid to any person, firm, corporation, association, institution or agency designated to receive it by order of the county department of his county.

SOURCES: Codes, 1942, § 7276; Laws, 1942, ch. 282, § 7, 1962, ch. 561, § 2, eff from and after passage (approved April 25, 1962).

§ 43-29-15. Assistance not assignable.

No assistance given under this chapter shall be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

SOURCES: Codes, 1942, § 7277; Laws, 1942, ch. 282, § 8.

§ 43-29-17. Appeal to the State Department.

The county department shall at once report to the State Department its decision upon each application. If an application is not acted upon by the county department within thirty (30) days after the filing of the application, or is denied or revoked, the applicant may appeal to the State Department in the manner and form prescribed by rules and regulations. The State Department shall upon receipt of such an appeal give the applicant an opportunity for a fair hearing. The State Department may also, upon its own motion, review any decision of a county department and may consider any application upon which a decision has not been made by the county department within a reasonable time.

The State Department may make such additional investigations as it may deem necessary and shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this chapter. All decisions of the State Department shall be binding upon the county department involved and shall be complied with by such county department.

SOURCES: Codes, 1942, § 7278; Laws, 1942, ch. 282, § 9.

Cross References — Appeal in case of aid to the blind, see § 43-3-73.
Appeal in case of old age assistance, see § 43-9-21.

§ 43-29-19. Periodic reconsideration and changes in amount of assistance.

All assistance grants made under this chapter shall be reconsidered as frequently as may be required by the rules and regulations of the state board. After such further investigation, the amount of assistance may be changed or assistance may be entirely withdrawn if the state commissioner or county department finds that the recipient's circumstances have altered sufficiently to warrant such action. The county department may at any time cancel and revoke assistance for cause and it may for cause suspend assistance for such period as it may deem proper. Whenever assistance is thus withdrawn, revoked, suspended or in any way changed, the county department shall at once report to the State Department such decision together with the record of its investigation. All such decisions shall be subject to review by the state commissioner as provided in Section 43-29-17.

SOURCES: Codes, 1942, § 7279; Laws, 1942, ch. 282, § 10.

§ 43-29-21. No fees to be paid.

No person shall make any charge or receive any fee for representing any applicant or recipient of assistance in any proceeding hereunder except as to criminal proceedings brought pursuant to Section 43-29-23 of this chapter; or with respect to any application whether such fee or charge be paid by the applicant or recipient or by any other person or persons. Any violation of this section shall constitute a misdemeanor and be punishable as provided in Section 43-29-23.

SOURCES: Codes, 1942, § 7281; Laws, 1942, ch. 282, § 12.

§ 43-29-23. Fraudulent acts.

Whoever obtains, or attempts, or aids, or abets any person to obtain by means of a wilfully false statement or representation or by impersonation, or other fraudulent device:

(1) assistance to which he is not entitled; or

(2) assistance greater than that to which he is justly entitled, is guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars ($500.00) or be imprisoned for not more than three (3) months, or be both so fined and imprisoned in the discretion of the court. In assessing the penalty, the court shall take into consideration the amount of money fraudulently received.

SOURCES: Codes, 1942, § 7282; Laws, 1942, ch. 282, § 13.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see §§ 99-19-73.

§ 43-29-25. Recovery from the estate of recipient for false representation.

On the death of any recipient double the total amount of assistance paid to such recipient under this chapter shall be allowed as a claim against the estate of such person if it be found that such recipient has obtained funds by false representation.

SOURCES: Codes, 1942, § 7280; Laws, 1942, ch. 282, § 11.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare § 202.

§ 43-29-27. Limitation of chapter.

All assistance granted under this chapter shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may be hereafter passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by amending or repealing chapter.

SOURCES: Codes, 1942, § 7283; Laws, 1942, ch. 282, § 14.

§ 43-29-29. Disbursement of funds, how made.

The State Department shall issue all checks for administrative expenses, and for assistance to persons qualifying for aid under the provisions of this chapter. All such checks shall be drawn upon funds made available to the state department of public welfare by the state auditor, upon requisition of the commissioner, approved by the state board. It is the purpose of this section to provide that the state auditor shall transfer, in lump sums, amounts to the state department of public welfare for disbursement under the regulations which shall be made by the state department.

SOURCES: Codes, 1942, § 7284; Laws, 1942, ch. 282, § 15.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Section 43-1-1 provides that the term "State Department of Public Welfare" shall mean the Department of Human Services.

§ 43-29-31. Limitation of assistance and administrative cost.

The total amount of assistance granted under the provisions of this chapter and the expenses incurred thereunder shall not exceed the amounts of funds appropriated therefor by the legislature.

SOURCES: Codes, 1942, § 7285; Laws, 1942, ch. 282, § 16.

§ 43-29-33. Litigation.

No suit shall be maintained in any court for the purpose of compelling an award of assistance or to enforce payment of any award of assistance made under the provisions of this chapter. Awards made hereunder shall in no case create any vested or other rights for assistance in the recipients.

SOURCES: Codes, 1942, § 7286; Laws, 1942, ch. 282, § 17.

§ 43-29-35. Reservation of right to amend or repeal chapter.

The Legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, benefits, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

SOURCES: Codes, 1942, § 7288; Laws, 1942, ch. 282, § 19.

§ 43-29-37. Administration.

The administration of this chapter, so far as applicable, shall be subject to all of the rules and regulations as prescribed by the state board of public welfare for the administration of old age assistance, as provided by Sections 43-1-1 through 43-1-17, and 43-9-1 through 43-9-45, and such other reasonable rules and regulations as may hereafter be promulgated by said board, for the proper administration of this chapter.

SOURCES: Codes, 1942, § 7289; Laws, 1942, ch. 282, § 20.

Editor's Note — Section 43-1-1 provides that the term "State Department of Public Welfare" shall mean the Department of Human Services.

§ 43-29-39. Funds.

Assistance for disabled persons granted under this chapter shall be paid out of any funds designated by the state legislature for this purpose.

SOURCES: Codes, 1942, § 7290; Laws, 1942, ch. 282, § 21.

CHAPTER 30

Mississippi Disability Resource Commission

Sec.
43-30-1. Mississippi Disability Resource Commission established; function; powers and duties; membership; terms of office; officers; meetings.

§ 43-30-1. Mississippi Disability Resource Commission established; function; powers and duties; membership; terms of office; officers; meetings.

(1) There is established the Mississippi Disability Resource Commission. The function of the commission is to:

(a) Assimilate and provide current information to persons who need health, special education or disability information or services;

(b) Refer those persons to the appropriate agencies to receive needed information or services;

(c) Facilitate coordination of services provided by agencies for the maximum benefit of persons who need health, special education or disability services;

(d) Be a comprehensive clearinghouse of information and single point of contact for people with disabilities related to potential service programs;

(e) Otherwise assist persons who need health, special education or disability services in obtaining information and services; and

(f) Monitor and provide oversight of the implementation of Sections 43-6-201 through 43-6-207 by state agencies.

(2) The powers and duties of the Mississippi Disability Resource Commission shall include, but are not limited to, or provided in any priority order, the following:

(a) To collect and analyze health, special education and disability-related data for use by state agencies, universities and colleges, organizations and private citizens;

(b) To advise the Governor, the Legislature, the Mississippi congressional delegation, state agencies, the business community, other public and private groups and the general public on health, special education and disability issues and concerns, and to make recommendations to address those identified matters, with emphasis on increasing opportunities for independence and employment;

(c) To coordinate and conduct public relations activities, including establishment of a permanent, statewide toll-free phone line for people with disabilities seeking access to services and programs, to promote the skills and capabilities of persons needing health, special education or disability services;

(d) To submit an annual report to the Governor and to the Legislature with recommendations to address the needs of persons in Mississippi needing health, special education or disability services, and other pertinent data regarding health, special education or disability issues;

(e) Build on the work of the Mississippi Partnerships in Employment Project, identify state agency policies and procedures that create barriers and disincentives for employment of persons with disabilities, and develop recommendations to reduce or eliminate those barriers and disincentives to better meet the needs of persons who desire employment;

(f) Identify best practices, effective partnerships, sources of available state and federal funds, and opportunities for shared services among existing state agencies to increase integrated and competitive employment opportunities for Mississippians with disabilities;

(g) Review and comment on proposed legislation that may affect the employment of persons with disabilities and consider recommendations of federal agencies and other organizations that promote the employment of persons with disabilities;

(h) Request that measurable goals and objectives be submitted to it by each relevant state agency to ensure implementation of Sections 43-6-201 through 43-6-207. The commission shall establish the time frames for submissions by state agencies and track their measurable progress in implementing Sections 43-6-201 through 43-6-207. All state agencies shall fully cooperate with and provide data and information to assist the commission in carrying out its duties; and

(i) Prepare an annual report to the Governor and members of the Legislature. The report shall detail progress toward the goals and objectives and full implementation of Sections 43-6-201 through 43-6-207. All state agencies shall cooperate with the commission on the creation and dissemination of the report. The report also shall identify barriers for achieving the outcomes along with the effective strategies and policies that can help realize the goals of Sections 43-6-201 through 43-6-207.

(3) The membership of the commission shall consist of fourteen (14) members as follows:

(a) The Executive Director of the State Department of Rehabilitation Services, or his or her designee;

(b) The Executive Director of the State Department of Mental Health, or his or her designee;

(c) The Executive Officer of the State Department of Health, or his or her designee;

(d) The State Superintendent of Public Education, or his or her designee;

(e) The Executive Director of the Division of Medicaid, or his or her designee;

(f) The Executive Director of the Department of Employment Security, or his or her designee;

(g) The Executive Director of the Mississippi Industries for the Blind; and

(h) Three (3) appointments by the Governor and two (2) appointments each by the Lieutenant Governor and Speaker of the House of Representatives.

Each of the appointments referenced in paragraph (h) of this subsection shall be a person with a disability, a representative of a disability advocacy group, or the parent of a person with a disability. Of these appointments, there shall be no more than one (1) appointment from the same consumer organization or advocacy group during the same term of appointment.

(4) Members appointed by the Governor, Lieutenant Governor and Speaker of the House shall serve for terms that run concurrently with the terms of office of the appointing officials. An appointment to fill a vacancy, other than by expiration of a term of office, shall be made for the balance of the unexpired term. All appointments required by this section shall be made no later than August 1, 2015.

(5) The members of the commission shall elect from their membership the chairperson and vice chairperson of the commission. The chairperson and vice chairperson shall be a member appointed under subsection (3)(h) of this section and a member from a state agency referenced in subsection (3)(a) through (g) of this section. The chairperson and vice chairperson shall serve for terms of one (1) year beginning on July 1 of each year, except that the terms of the first chairperson and vice chairperson shall begin on the date of their election to those positions. Each year at the expiration of the terms of the chairperson and vice chairperson, the vice chairperson during the preceding year shall serve as chairperson for the next year, and a new vice chairperson shall be elected according to the terms set forth in this subsection.

(6) The commission shall meet at least quarterly and hold other meetings as are necessary for the purpose of conducting required business, not exceeding six (6) meetings in any one (1) fiscal year. If funds are available for that purpose, the appointed members of the commission may be paid per diem and travel expenses in accordance with the provisions of Sections 25-3-69 and 25-3-41. The commission shall convene to begin work no later than September 1, 2015.

(7) The Mississippi Disability Resource Commission may receive and expend any monies appropriated by the Legislature, apply for and utilize grants, and receive gifts or any other appropriate source of funds to carry out the duties of office.

SOURCES: Laws, 2005, ch. 481, § 1; Laws, 2015, ch. 469, § 6, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment added (1)(f) and (2)(e) through (i); substituted "fourteen (14) members" for "thirteen (13) members" in (3); substituted "Employment Security" for "Human Services" in (3)(f); added (3)(g); redesignated former (3)(g) as present (3)(h); substituted "(h)" for "(g)" in the first sentence of the last paragraph of (3); added the last sentence in (4); in the second sentence of (5), substituted "(3)(h)" for "(3)(g)", and "(3)(a) through (g)" for "(3)(a) through (f); added the last sentence in (6); and made minor stylistic changes.

CHAPTER 31

Poor Persons

Sec.
43-31-1. Jurisdiction; county homes.
43-31-3. Purchase land and erect buildings.
43-31-5. May sell or exchange the property.
43-31-7. Rules for government of county home.
43-31-9. Pauper employed in labor.
43-31-11. Relief until removal.
43-31-12. Transferred.
43-31-13. Claims allowed.
43-31-15. Tax for support of poor.
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§ 43-31-1. Jurisdiction; county homes.

The board of supervisors of each county shall have the jurisdiction and power necessary and proper for the relief and support of the poor of its county, and it shall have control of the county home, and may employ a suitable person to take charge of the same. It shall see that the poor are properly treated; and it may provide nurses and physicians in such cases as it may deem proper, and purchase medicines, and payment therefor may be ordered out of the proper fund by warrant on the county treasurer.

SOURCES: Codes, Hutchinson's 1848, ch. 14, art. 2 (1); 1857, ch. 23, art. 1; 1871, § 1975; 1880, §§ 624, 627; 1892, § 3143; 1906, § 3566; Hemingway's 1917, § 6183; 1930, § 5694; 1942, § 7345; Laws, 1912, ch. 234.

Cross References — Constitutional authority of board of supervisors to provide poor relief, see Miss. Const. Art. 14, § 262.

Jurisdiction and powers of board of supervisors, generally, see § 19-3-41.

Tax on county farms benefited by drainage district, see § 51-31-103.

JUDICIAL DECISIONS

1. In general.

A county home for paupers, for which poverty was the indispensable prerequisite for admission and from which the non-indigent aged or ill were excluded, was not an institution "primarily engaged in the care of the sick, the aged, the mentally ill or defective" within the meaning of federal legislation extending minimum wage legislation to the employees of such institutions, even though many of the residents of said home were old or ill. Brennan v. Harrison County, 505 F.2d 901 (5th Cir. 1975).

A contract by a county to pay the superintendent of its poorhouse a certain sum for each pauper there cared for, does not bind the county to require all indigent persons maintained by it to become inmates of the poorhouse, nor is the county liable to the superintendent for money paid for such maintenance elsewhere, nor for breach of contract in that it so aided the pauper. Polk v. Covington County, 77 Miss. 803, 27 So. 598 (1900).

Under the provisions of ch. 12, Code of 1880, it is the duty of the board of supervisors of any county when in session, to provide for the relief of paupers in the county, whether the paupers have a settlement or not; and during the recess of the board each member is a commissioner of the poor within his district and may act alone, and report his action at the next meeting of the board. Jones v. De Soto County Supvrs., 60 Miss. 409 (1882).

Compensation cannot be recovered from the county be a person who, without application to the district supervisor, or board of supervisors, supports a pauper who is a proper subject for public relief and can be removed to the poorhouse. Reynolds v. Board of Supvrs., 59 Miss. 132 (1881).

The board of supervisors has jurisdiction to hear application for compensation in such case and to decide upon it. Reynolds v. Board of Supvrs., 59 Miss. 132 (1881).

ATTORNEY GENERAL OPINIONS

Quitman County may acquire property from a school district that it will in turn convey to an economic development district which will lease the property to a private assisted living facility because the conveyance will promote the general welfare goals of the statute. Scripper, March 20, 1998, A.G. Op. #98-0129.

A county board of supervisors may create a nonprofit corporation and serve as the sole member thereof and may fund such corporation from the surplus proceeds of a sale or lease of a community hospital owned by the county, when the funds are expended by the corporation to improve the quality of health care provided to citizens and residents of the county, and providing instruction on the improvement of personal health. Griffith, July 23, 1999, A.G. Op. #99-0370.

A county has a duty to provide for it's destitute aged citizens. Shepard, Aug. 23, 2004, A.G. Op. 04-0322.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare § 12-18.

§ 43-31-3. Purchase land and erect buildings.

The board of supervisors may purchase, in the name of the county, not more than one hundred and sixty (160) acres of land for a county home and farm; and it may erect thereon suitable buildings and make all necessary contracts for these purposes.

SOURCES: Codes, Hutchinson's 1848, ch. 14, art. 5 (2); 1857, ch. 23, art. 2; 1871, § 1976; 1880, § 625; 1892, § 3155; 1906, § 3578; Hemingway's 1917, § 6195; 1930, § 5695; 1942, § 7346; Laws, 1912, ch. 234.

Cross References — Power of board of supervisors to acquire real estate, see §§ 17-5-1, 19-7-1.

ATTORNEY GENERAL OPINIONS

Quitman County may acquire property from a school district that it will in turn convey to an economic development district which will lease the property to a private assisted living facility because the conveyance will promote the general welfare goals of the statute. Scripper, March 20, 1998, A.G. Op. #98-0129.

§ 43-31-5. May sell or exchange the property.

The board of supervisors may, when deemed proper, sell or exchange and convey the county home property, and purchase other property for such use.

SOURCES: Codes, 1880, § 625; 1892, § 3156; 1906, § 3579; Hemingway's 1917, § 6196; 1930, § 5696; 1942, § 7347; Laws, 1912, ch. 234.

§ 43-31-7. Rules for government of county home.

The board of supervisors shall prescribe such rules as it may deem expedient for the government and support of the county home, and may discharge any superintendent and employ another.

SOURCES: Codes, 1880, § 628; 1892, § 3149; 1906, § 3572; Hemingway's 1917, § 6189; 1930, § 5697; 1942, § 7348; Laws, 1912, ch. 234.

§ 43-31-9. Pauper employed in labor.

The board of supervisors may cause the superintendent of the county home to employ in labor such paupers as may be able to work, in such way as it may deem proper without endangering their health or without oppressing them; and a fair amount of the profits resulting from such labor shall be kept and returned to the board of supervisors.

SOURCES: Codes, Hutchinson's 1848, ch. 14, art. 5 (4); 1857, ch. 23, art. 7; 1871, § 1980; 1880, § 630; 1892, § 3150; 1906, § 3573; Hemingway's 1917, § 6190; 1930, § 5698; 1942, § 7349; Laws, 1912, ch. 234.

§ 43-31-11. Relief until removal.

The board of supervisors, and, in case of emergency, the supervisor of the district, may provide for the temporary relief of a pauper until he can be removed to the county home.

SOURCES: Codes, 1892, § 3153; 1906, § 3576; Hemingway's 1917, § 6193; 1930, § 5699; 1942, § 7350; Laws, 1912, ch. 234.

§ 43-31-12. Transferred.

Transferred by Laws, 1993, ch. 512, § 1.

[Laws, 1993, ch. 512, § 1, eff. from and after July 1, 1993]

Editor's Note — This section, which was derived from Laws of 1993, ch. 512, § 1, was transferred and reclassified as § 45-31-12 by the Revisor of Statutes.

§ 43-31-13. Claims allowed.

The board of supervisors may allow, as far as be deemed right, the claims of persons, who, by authority of one of the supervisors, have temporarily taken care of, fed, clothed, administered to, or buried such paupers as were at the time proper subjects for relief, but could not at once be removed to the county home.

SOURCES: Codes, 1857, ch. 23, art. 3; 1871, § 1977; 1880, § 626; 1892, § 3158; 1906, § 3581; Hemingway's 1917, § 6198; 1930, § 5700; 1942, § 7351; Laws, 1912, ch. 234.

Cross References — Disposition of claims against county, generally, see § 19-13-31.

JUDICIAL DECISIONS

1. In general.

The board of supervisors under this section [Code 1942, § 7351] has no power to allow a physician's claim for medical services rendered by authority of a member of the board to an indigent sick person when it does not appear that the person was ever declared to be a pauper by the board, nor that he so desired to be so declared and be provided for by the county. Tallahatchie County v. Harrison, 75 Miss. 744, 23 So. 291 (1898).

A county is liable for surgical services to a poor person in an emergency though no steps had been taken to have him declared a pauper and removed to the poorhouse. Board of Supvrs. v. Gilbert, 70 Miss. 791, 12 So. 593 (1893).

In case of a pauper not being able to be removed to the poorhouse without cruelty, the supervisor of the district may make provision for such pauper, and the board of supervisors should allow for the person who cared for the pauper proper compensation for her support during the period after notice to the supervisor. Board of Supvrs. v. Watson, 70 Miss. 85, 11 So. 632 (1892).

Compensation cannot be recovered from the county by a person who, without application to the district supervisor, or board of supervisors, supports a pauper who is a proper subject for public relief and can be removed to the poorhouse. Reynolds v. Board of Supvrs., 59 Miss. 132 (1881).

The board of supervisors has jurisdiction to hear application for compensation in such case and to decide upon it. Reynolds v. Board of Supvrs., 59 Miss. 132 (1881).

The person having the claim may present it to the board. It need not be presented by the supervisor. Cotton v. Board of Police, 27 Miss. 367 (1854).

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 28-49.

§ 43-31-15. Tax for support of poor.

The board of supervisors shall annually assess and cause to be collected by the tax collector, and paid into the general fund of the county treasury, such tax as may be necessary for the support of the poor of the county.

SOURCES: Codes, Hutchinson's 1848, ch. 14, art. 2 (2); 1857, ch. 23, art. 2; 1871, § 1976; 1880, § 625; 1892, § 3154; 1906, § 3577; Hemingway's 1917, § 6194; 1930, 5701; 1942, § 7352; Laws, 1986, ch. 400, § 30, eff from and after Oct 1, 1986.

JUDICIAL DECISIONS

1. In general.

Where county undertook to levy tax "for food stamp plan and pauper maintenance," without separately stating what portion of the tax was for each item thereof in violation of statute, and the tax exceeded tax anticipation loan notes executed by county, taxpayer paying tax under protest was entitled to recover such tax and also tax paid pursuant to levy "for food stamp loan warrants." Chickasaw County v. Gulf, M. & O.R. Co., 195 Miss. 754, 15 So. 2d 348 (1943).

As to the contention that this section [Code 1942, § 7352] imposes no limitations upon the amount that may be levied for the support of the poor of the county, it is a sufficient answer that in the absence of an express limitation it is to be implied that the taxing authorities should levy only such an amount as might be reasonably necessary for the support of the poor of the county who are within the class contemplated by this chapter (chap 4, title 26, Code of 1942). Chickasaw County v. Gulf, M. & O.R. Co., 195 Miss. 754, 15 So. 2d 348 (1943).

This provision for a tax levy for a special purpose and not for the benefit o the general public was not repealed by Laws 1932, chap. 104, providing for a limitation of taxes for general purposes. Board of Supvrs. v. Illinois Cent. R. Co., 186 Miss. 294, 190 So. 241 (1939).

Under Code of 1857, art. 2 p. 210, authorizing the board of police of the several counties to raise revenue for the support of the poor, and the act p. 416 art. 16, authorizing the board to raise revenue for general county purposes, are distinct and independent statutes, and the tax contemplated by the former may still be levied and collected. Coulson v. Harris, 43 Miss. 728 (1871).

§ 43-31-17. Obligations not incurred except by authority of the board.

Money shall not be disbursed from the county treasury for the relief or support of paupers, except on the order of the board of supervisors; nor shall any obligations be incurred by the county, except by its authority.

SOURCES: Codes, 1880, § 625; 1892, § 3157; 1906, § 3580; Hemingway's 1917, § 6197; 1930, § 5702; 1942, § 7353.

§ 43-31-19. Settlement of paupers.

To entitle any pauper to be supported by the county, he must have been a bona fide resident thereof for six (6) months prior to his application for support; and the settlement of the parent or parents shall entitle the children to a settlement.

SOURCES: Codes, 1857, ch. 23, art. 9; 1871, § 1982; 1880, § 631; 1892, § 3144; 1906, § 3567; Hemingway's 1917, § 6184; 1930, § 5703; 1942, § 7354.

JUDICIAL DECISIONS

1. In general.

Absent a compelling state interest, provisions of Connecticut and Pennsylvania statutes conditioning welfare assistance on one year's residence violated the equal protection clause of the 14th Amendment to the federal constitution by imposing a classification on welfare applicants which impinged on their constitutional right to travel freely from state to state, and similarly that absent a compelling governmental interest a like congressionally enacted provision of the District of Columbia code violated the due process clause of the 5th Amendment by imposing a discrimination which impinged on the constitutional right to travel. Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), overruled on other grounds, Edleman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974).

RESEARCH REFERENCES

ALR. Alcoholic as entitled to public assistance under poor laws. 43 A.L.R.3d 554.

§ 43-31-21. Duty of each supervisor.

Whenever any member of the board of supervisors shall ascertain that there is a pauper in his district probably entitled to relief, it shall be his duty to examine into the pauper's right to support; and if he be satisfied that such pauper has a settlement in his county, and is unable to support himself, or is entitled to be supported, or provided for by the county, he shall report the facts to the board of supervisors for its action; and in case of emergency, he may give his written order to the superintendent of the county home to receive such pauper; and may cause the pauper to be removed to the county home.

SOURCES: Codes, 1857, ch. 23, art. 5; 1871, § 1979; 1880, § 629; 1892, § 3151; 1906, § 3574; Hemingway's 1917, § 6191; 1930, § 5704; 1942, § 7355; Laws, 1912, ch. 234.

Cross References — Temporary care and maintenance of individuals with mental illness who are unable to pay for care, see § 19-5-43.

§ 43-31-23. Support of pauper for his labor.

The board of supervisors may, with the consent of the pauper, contract with any person for keeping and maintaining any pauper for the work or service which may be rendered by him in compensation for his support and maintenance; and if any pauper shall refuse to abide by the disposition made of him by the board, he shall not be entitled to relief during his refusal.

SOURCES: Codes, Hutchinson's 1848, ch. 14, art. 2 (2); 1857, ch. 23, art. 5; 1871, § 1979; 1880, § 629; 1892, § 3152; 1906, § 3575; Hemingway's 1917, § 6192; 1930, § 5705; 1942, § 7356.

§ 43-31-25. Certain relatives bound to support pauper; liability of deceased pauper's estate.

The father and grandfather, the mother and grandmother, and brothers and sisters, and the descendants of any pauper not able to work, as the board of supervisors shall direct, shall, at their own charge, relieve and maintain such pauper; and, in case of refusal, shall forfeit and pay the county the sum of One Hundred Fifty Dollars ($150.00) per month, for each month they may so refuse, to be recovered in the name of the county; and shall be liable to any governmental entity who supplies such poor relative, if abandoned, with necessaries, not exceeding said sum per month; and if any such relative be a nonresident he may be proceeded against by attachment, as in cases of attachment against debtors.

The estate of any pauper, who before his death was being maintained by the county at a county home for paupers, shall be liable to the county in a sum equal to not more than One Hundred Fifty Dollars ($150.00) for each month or any part of a month for which the county maintained the pauper in a county home for paupers, such sum to be recovered in the name of the county in the same manner as provided by law for the recovery of claims of general creditors against the estate of a decedent.

SOURCES: Codes, Hutchinson's 1848, ch. 14, art. 2 (8); 1857, ch. 23, art. 13; 1871, § 1986; 1880, § 632; 1892, § 3148; 1906, § 3571; Hemingway's 1917, § 6188; 1930, § 5706; 1942, § 7357; Laws, 1987, ch. 369, eff from and after July 1, 1987.

Cross References — Recovery against estate of recipient of old age assistance for false representation, see § 43-9-29.

Enforcement of liabilities of parents of children by public authority charged with support of child, see § 93-9-9.

JUDICIAL DECISIONS

1. In general.

Chancery court did not abuse its discretion by declining to require a parent to provide post-majority financial support for the parent's child because Mississippi law did not vest the court with the authority to mandate that parents financially support their offspring post-majority. Hays v. Alexander, 114 So. 3d 704 (Miss. 2013).

The duty under this section [Code 1942, § 7357] is limited to cases of paupers and does not apply to those who are able to support themselves, either by labor or by having sufficient property for such support. Lee v. Lee's Estate, 186 Miss. 636, 191 So. 661 (1939).

Statute held to obligate parents to maintain dependent members of their families, who are unable to care for themselves. Holsomback v. Slaughter, 177 Miss. 553, 171 So. 542 (1937).

That adult daughter was temporarily confined in insane hospital held not to relieve mother of statutory duty of caring for daughter. Holsomback v. Slaughter, 177 Miss. 553, 171 So. 542 (1937).

Father and guardian of insane child is properly chargeable, out of estate of child in his hands, for hospitalization of child. Dunagin's Guardianship v. East Miss. State Hosp., 167 Miss. 766, 150 So. 370 (1933).

RESEARCH REFERENCES

ALR. Constitutionality of statutory provision requiring reimbursement of public by child for financial assistance to aged parents. 75 A.L.R.3d 1159.

CJS. 81 C.J.S., Social Security and Public Welfare § 203.

§ 43-31-27. Strolling paupers removed and, if sick, relieved.

The members of the board of supervisors shall prevent the poor from strolling from one district to another; and in case any pauper shall leave the county in which he may have a settlement, and remove to another county, any member of the board of supervisors may make an order to remove the pauper back to the county from which he came, directed to any constable to execute. But if the pauper be sick or disabled so that he cannot be removed, he shall be provided for in the county in which he may be found until he can be removed; and the county in which he had a legal settlement shall pay all charges occasioned by the support of the pauper and for removal, or burial in case of death, which shall constitute a charge against the county, and may be recoverable by action before the proper court. And it shall be the duty of the board of supervisors of the county to which any pauper belongs, to receive him, on his removal, and provide for him as in other cases.

SOURCES: Codes, Hutchinson's 1848, ch. 14, art. 2 (4); 1857, ch. 23, art. 11; 1871, § 1984; 1880, § 633; 1892, § 3147; 1906, § 3570; Hemingway's 1917, § 6187; 1930, § 5707; 1942, § 7358.

§ 43-31-29. Relief of those not entitled to a settlement; burial of strangers; indigent burial policy; board adjudication of person as pauper; board authorized to contribute funds or pay full cost of burial.

The board of supervisors of any county shall also relieve, support or employ paupers found or being in the county, though not entitled to a settlement therein, and, in case of their decease, shall decently bury them; and all expenses shall be chargeable to and recoverable from the county in which such pauper had a settlement; and the board shall decently bury all strangers dying in the county. The board shall establish an indigent burial policy which shall be spread upon the minutes of the board. The policy shall establish standards and eligibility criteria for the administration of indigent burials. The board may be able to establish the status of someone as a pauper, either before or after his death, based upon available records of recent public assistance and any other available evidence. After review of the records, the board may adjudicate a person as a pauper and shall spread upon its minutes the adjudication. The board, in its discretion, may then pay the full cost of burial or may contribute funds to assist in the cost of the burial.

SOURCES: Codes, 1857, ch. 23, art. 10; 1871, § 1983; 1880, § 632; 1892, § 3145; 1906, § 3568; Hemingway's 1917, § 6184; 1930, § 5708; 1942, § 7359; Laws, 2009, ch. 347, § 1, eff from and after July 1, 2009.

JUDICIAL DECISIONS

1. In general.

County not liable for costs of burial of unknown person killed in railroad wreck and buried by sheriff at request of railroad company. Marshall County v. Rivers, 88 Miss. 45, 40 So. 1007 (1906).

ATTORNEY GENERAL OPINIONS

A board of supervisors has the authority to bury unclaimed bodies, identified paupers, and unknown strangers after an order has been spread on their official board minutes; however, these laws do not contemplate the county supplementing or reimbursing persons merely claiming to be or have been paupers solely to gain funeral assistance for the family. Chamberlin, May 9, 2003, A.G. Op. #03-0214.

§ 43-31-31. Certain dead to be buried by corporate authorities.

The municipal authorities of every city, town, and village shall bury all strangers found dead within their limits, or found floating in any waters at a point adjoining their limits, and all expenses or charges shall be chargeable to the county; and an accurate account thereof shall be reported to the board of supervisors, who shall allow the same, and order it to be paid out of the county treasury; but the boards of supervisors may fix maximum charges for such burials.

SOURCES: Codes, 1857, ch. 23, art. 15; 1871, § 1988; 1880, § 636; 1892, § 3146; 1906, § 3569; Hemingway's 1917, § 6186; 1930, § 5709; 1942, § 7360.

Cross References — Municipal power to promote general health, abate nuisances, etc., see § 21-19-1.

§ 43-31-33. Children of seven years of age or older not allowed at the county home.

It shall be unlawful for any superintendent of a county home to permit a healthy child of seven (7) years of age, or over, to remain at the county home; but all such children being there shall be reported to the board of supervisors, who shall deal with them in the same way as other poor children.

SOURCES: Codes, 1892, § 3161; 1906, § 3584; Hemingway's 1917, § 6201; 1930, § 5714; 1942, § 7365; Laws, 1916, ch. 227.

§ 43-31-35. Bond required of commanders of vessels bringing into state certain persons who may require support and care.

If any person commanding a ship, vessel, steamboat, or other watercraft imports into this state, or brings to the shores or within the limits thereof, any infant, person with mental illness, maimed, aged or infirm person or vagrant who is likely to become chargeable on the county, on the requisition of the supervisor of the district or the mayor of any municipality, the captain, master, or commander of the ship, vessel, steamboat, or other watercraft shall enter into bond with sufficient sureties, payable to the county, conditioned to indemnify the county against all charges that may be incurred in the support and care of that person. Any captain, master, or commander failing or refusing to give the bond required shall forfeit and pay to the county the sum of Two Hundred Dollars ($200.00) for each infant, person with mental illness, maimed, aged, or infirm person or vagrant so brought into the state, to be recovered by action.

SOURCES: Codes, Hutchinson's 1848, ch. 14, art. 2 (9); 1857, ch. 23, art. 19; 1871, § 1989; 1880, § 640; 1892, § 3164; 1906, § 3587; Hemingway's 1917, § 6204; 1930, § 5715; 1942, § 7366; Laws, 2008, ch. 442, § 17, eff from and after July 1, 2008.

Cross References — Crime of importing contagious diseases, see § 97-27-11.

RESEARCH REFERENCES

Law Reviews. Whitfield, A guide to finding a right to shelter for the homeless. 9 Miss. College L. Rev. 295, Spring 1989.

§ 43-31-37. Master of vessel landing alien passengers.

When any ship, vessel, or steamboat shall arrive at any port or harbor with alien passengers on board, who are to be landed or left, and who may become a charge as paupers, the master or commanding officer of the vessel shall, before such passengers, or any of them, leave the ship, vessel or steamboat, deposit with the supervisor of the district where the passengers are to be landed or left, a list of their names, and shall forthwith enter into bond, with sufficient sureties, payable to the county, in a sufficient penalty, with condition to indemnify the county from all expenses which may arise from supporting or maintaining such aliens; and in default of such bond, the captain, master, or commander may be committed by any justice of the peace, or mayor of any city, town, or village, until the bond be executed; and, moreover, the captain, master, or commander shall be liable to be indicted, and, on conviction, shall be fined in the sum of one hundred dollars ($100.00) for each person landed in violation of this section; but the board of supervisors, on investigation of the matter, may dispense with the bond.

SOURCES: Codes, 1857, ch. 23, art. 20; 1871, § 1990; 1880, § 641; 1892, § 3165; 1906, § 3588; Hemingway's 1917, § 6205; 1930, § 5716; 1942, § 7367.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statutes limiting or barring public health care to indigent aliens. 113 A.L.R.5th 95.

§ 43-31-39. Distribution of federal surplus food commodities to needy.

The boards of supervisors of the several counties of Mississippi are hereby authorized and empowered, in their discretion, to cooperate with the United States Department of Agriculture and with the state department of public welfare and the respective county departments of public welfare in obtaining surplus food commodities to the end that these surplus food commodities may be available for distribution to needy persons under the program of surplus food commodity distribution provided by the agricultural adjustment act of August 24, 1935, as amended, the agricultural act of October 31, 1949, as amended, and all other acts of congress now or hereafter enacted authorizing the secretary of the United States Department of Agriculture, or any other agency of the United States government, to distribute designated available surplus food commodities free of charge, to any and all eligible needy persons in the state.

The boards of supervisors of the several counties of Mississippi are authorized and empowered, in their discretion, to appropriate and set aside from any available funds, in either the pauper fund or the general fund, a sufficient amount with which they may lease, purchase or otherwise acquire storage facilities for such surplus food commodities, including storage under refrigeration, provide for the unloading, packaging, handling and distribution of said commodities and pay for such personnel or help as may be required in order to protect from waste and spoilage, to cooperate in the distribution of such commodities upon delivery to their respective counties, and may pay the rentals, salaries, and incidental expenses thereof, monthly, from their respective treasuries.

SOURCES: Codes, 1942, § 7367.5; Laws, 1956, ch. 184, § 1.

Cross References — Municipal power to contribute to federal food stamp program, see § 21-19-41.

Crime of fraudulently obtaining food commodity donated by federal or state government, see § 97-7-41.

CHAPTER 33

Housing and Housing Authorities

Article 1. Housing Authorities 43-33-1
Article 3. Regional Authorities 43-33-101
Article 5. Home Loan Bonds 43-33-201
Article 7. Insured Loans 43-33-301
Article 9. Mississippi Housing Finance Corporation. [Repealed]
Article 11. Mississippi Home Corporation Act 43-33-701

ARTICLE 1.

HOUSING AUTHORITIES.

In General 43-33-1
Second Supplemental Housing Authority Law 43-33-61
Housing Task Force 43-33-75
Contracts With the United States or Its Agencies. [Repealed]

IN GENERAL

SEC.
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43-33-3. Finding and declaration of necessity.
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43-33-28. Issuance of leased housing revenue refunding bonds by certain housing authorities.
43-33-29. Remedies of an obligee of authority.
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43-33-41. Reports.
43-33-43. Cooperation in undertaking housing projects.
43-33-45. Agreements as to payments by housing authority.
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43-33-49. Procedure for exercising powers.
43-33-51. Supplemental nature of article.
43-33-53. Article controlling.

§ 43-33-1. Title; definitions.

Sections 43-33-1 through 43-33-53 may be referred to as the "Housing Authorities Law," and the following terms, whenever used or referred to in said sections, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Authority" or "housing authority" shall mean any of the public corporations created by or pursuant to this Housing Authorities Law, or any law amendatory or supplemental thereto, with power to undertake housing projects for the persons of low income.

(b) "City" shall mean any city in this state. "County" shall mean any county in this state. "The city" shall mean the particular city for which a particular housing authority is created. "The county" shall mean the particular county for which a particular housing authority is created.

(c) "State public body" shall mean any city, town, village, county, municipal corporation, commission, district, authority, or other subdivision or other public body of this state.

(d) "Governing body" shall mean, in the case of a city, the board of aldermen, commissioners, or council; in the case of a county, the board of supervisors; and in the case of any other state public body, the board of aldermen, council, commissioners, board or other body having charge of the fiscal affairs of such state public body.

(e) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(f) "Clerk" shall mean the clerk of the city or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on such clerk.

(g) "Area of operation," in the case of a housing authority of a city, shall include such city and the area within five (5) miles of the territorial boundaries thereof.

(h) "Federal government" shall include the United States of America, the United States Housing Authority, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(i) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement, or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health or morals.

(j) "Housing project" shall mean any work or undertaking: (1) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or (2) to provide decent, safe and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or (3) to accomplish a combination of the aforegoing. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(k) "Persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(*l*) "Bonds" shall mean any bonds, notes, interim certificates, debentures, or other obligations issued by a housing authority.

(m) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(n) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, or lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority.

SOURCES: Codes, 1942, § 7295; Laws, 1938, ch. 338, § 1; Laws, 1942, ch. 233, § 1.

Cross References — Governing authority of municipality authorized to enter into agreements and contracts with housing authority as defined in this section to provide extra police protection, see § 21-17-1.

Homestead exemption, see §§ 27-33-19.

Veterans' farm and home purchase law, see §§ 35-7-1 et seq.

Second Supplemental Housing Authorities Law, see §§ 43-33-61 through 43-33-69.

Supplemental Housing Authorities Law (regional housing authorities), see §§ 43-33-101 et seq.

Urban renewal, see §§ 43-35-1 et seq.

Municipal slum clearance, see §§ 43-35-101 et seq.

Additional powers of municipalities and housing authorities with respect to community development, see § 43-35-503.

Federal Aspects — National Affordable Housing Act, P. L. 101-625, see 42 USCS §§ 12701 et seq.

JUDICIAL DECISIONS

1. In general.

The Housing Authority Act (§§ 7295-7600-06, inclusive, Code of 1942) neither violates § 112 nor § 182 of the Constitution. Biloxi-Pascagoula Real Estate Bd., Inc. v. Mississippi Regional Hous. Auth. No. VIII, 231 Miss. 89, 93 So. 2d 856 (1957).

While § 182 of the Constitution prohibits the surrender or abridgment of the power to tax corporations and their property, it has no reference to the property of public bodies, corporate and politic. Quinn v. City of McComb, 212 Miss. 730, 55 So. 2d 479 (1951).

The failure to publish a resolution declaring the need for a housing authority in the city and setting up the same, does not invalidate the housing acts. Quinn v. City of McComb, 212 Miss. 730, 55 So. 2d 479 (1951).

The Housing Authorities Act does not exclude municipalities operating under special charter. Quinn v. City of McComb, 212 Miss. 730, 55 So. 2d 479 (1951).

ATTORNEY GENERAL OPINIONS

Based on very broad definition of "housing project" under Miss. Code Section 43-33-1(j), housing authority may fix rentals at rate necessary to meet the costs of, and to provide for, maintaining and operating activities of authority involving acquisition of property, demolition of existing structures, construction of improvements, etc. Alexander, Apr. 7, 1993, A.G. Op. #93-0158.

The Mississippi Regional Housing Authority No. VI may contract with a nonprofit corporation established by the Authority pursuant to Section 43-33-11(i) to perform such work as collecting rents, cutting grass, repairing housing units, etc., for the corporation; however, any contract for the performance of such duties by employees of the authority and at the authority's expense may not include action that would result in a donation or gratuity being made to a third party in contravention of the express provisions of Section 66 of the Mississippi Constitution of 1890. McArty, April 9, 1999, A.G. Op. #99-0150.

A regional housing authority is not an "agency" for purposes of the Administrative Procedures Law and is thus exempt from the requirements thereof, including the filing of rules. May 5, 2006, A.G. Op. 06-0152.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 1 et seq.

§ 43-33-3. Finding and declaration of necessity.

It is hereby declared (a) that the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern and (b) that it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination.

SOURCES: Codes, 1942, § 7296; Laws, 1938, ch. 338, § 2.

§ 43-33-5. Housing authorities created.

In each town or city and in each county of the state there is hereby created a public body corporate and politic to be known as the "housing authority" of the town or city or county. However, such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the town or city or the county, as the case may be, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such town or city or county. The determination as to whether there is such need for an authority to function (a) may be made by the governing body on its own motion or (b) shall be made by the governing body upon the filing of a petition signed by twenty-five (25) residents of the town or city or county, as the case may be, asserting that there is need for an authority to function in such town or city or county and requesting that the governing body so declare.

The governing body shall adopt a resolution declaring that there is need for a housing authority in the town or city or county, as the case may be, if it shall find (a) that unsanitary or unsafe inhabited dwelling accommodations exist in such town or city or county or (b) that there is a shortage of safe or sanitary dwelling accommodations in such town or city or county available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or unsanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the town or city or county, as the case may be. A copy of such resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding.

SOURCES: Codes, 1942, § 7297; Laws, 1938, ch. 338, § 3; Laws, 1950, ch. 511.

Cross References — Regional housing authorities, see §§ 43-33-101 et seq.
Powers of Mississippi Home Corporation, see § 43-33-717.
Construction in conjunction with Mississippi Home Corporation Act, see § 43-33-761.
Urban renewal authority, see § 43-35-33.

JUDICIAL DECISIONS

1. In general.
2. Proceedings establishing housing authority.

1. In general.

The Housing Authority Act (§§ 7295-7322-06, inclusive, Code of 1942) neither violates § 112 nor § 182 of the Constitution. Biloxi-Pascagoula Real Estate Bd., Inc. v. Mississippi Regional Hous. Auth. No. VIII, 231 Miss. 89, 93 So. 2d 856 (1957).

The failure to publish a resolution declaring the need for a housing authority in the city and setting up the same, does not invalidate the housing acts. Quinn v. City of McComb, 212 Miss. 730, 55 So. 2d 479 (1951).

The Housing Authorities Act does not exclude municipalities operating under special charter. Quinn v. City of McComb, 212 Miss. 730, 55 So. 2d 479 (1951).

2. Proceedings establishing housing authority.

Where it was alleged that when it became publicly known that the board of supervisors and the housing authority were attempting to apply for loans, the complainant appeared before the board and asked it to rescind its prior action declaring the need for the authority and its approval of the application for preliminary loans, all without avail, but no appeal from the board's action was taken to the circuit court, the board's action was not subject to a collateral attack by an action to enjoin it from proceeding under the Housing Authority Act. Biloxi-Pascagoula Real Estate Bd., Inc. v. Mississippi Regional Hous. Auth. No. VIII, 231 Miss. 89, 93 So. 2d 856 (1957).

Where after published notice of a hearing at which no one appeared and protested against the action, the board of supervisors adopted a resolution finding a need for the housing authority to function, and no appeal was taken from the board's adopted resolution, which was legal on its face, a collateral attack upon the resolution in the form of a proceeding to enjoin the board of supervisors from acting under the Housing Authority Act was not maintainable. Biloxi-Pascagoula Real Estate Bd., Inc. v. Mississippi Regional Hous. Auth. No. VIII, 231 Miss. 89, 93 So. 2d 856 (1957).

Where the board of supervisors had determined the need for the functioning of a housing authority, and the authority had been set up, it was not necessary that the board should again call for a hearing and determination before it could seek preliminary loans for the Public Housing Administration. Biloxi-Pascagoula Real Estate Bd., Inc. v. Mississippi Regional Hous. Auth. No. VIII, 231 Miss. 89, 93 So. 2d 856 (1957).

Under this section [Code 1942, § 7297] the governing body of the city was authorized to adopt a resolution declaring the need for a housing authority, if it should find that unsanitary, unsafe dwelling accommodations exist and that there is a shortage of safe and sanitary dwelling accommodations available to families of low incomes at rentals they can afford, and when this need has been declared and the authority has been set up there is no requirement in the act that like adjudications shall be made from time to time hereafter as new units are constructed. Quinn v. City of McComb, 212 Miss. 730, 55 So. 2d 479 (1951).

ATTORNEY GENERAL OPINIONS

The Tort Claims Act is not a "law with respect to the acquisition, operation or disposition of property," and therefore a housing authority is not excluded from the requirements of the Tort Claims Act. See Sections 11-46-1(i) and 43-33-11. Hardy, March 29, 1996, A.G. Op. #96-0157.

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 10 et seq.

§ 43-33-7. Appointment, qualifications and tenure of commissioners.

When the governing body of a city adopts a resolution as provided in Section 43-33-5, such governing body shall forthwith appoint five (5) persons as commissioners of the authority created for said city. When the governing body of a county adopts a resolution as provided in Section 43-33-5, said governing body shall appoint five (5) commissioners for said board created for said county. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4) and five (5) years, respectively, from the date of their appointment, and thereafter when a vacancy shall occur either by the expiration of term of office or otherwise, the vacancy shall be filled by the governing body of the city or county, as the case may be, either to fill an unexpired term where a commissioner shall die or resign or shall become disqualified during his term, or for a full term of five (5) years where the term of a commissioner expires. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created. However, at least one (1) commissioner must be a person who is directly assisted by the authority if required under applicable federal law. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the city or county as the case may be and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive compensation for his services in the manner and amount authorized in Section 25-3-69 for up to fifteen (15) days during the fiscal year of the authority, and he shall also be entitled to necessary expenses, including traveling expenses, incurred in the discharge of his duties.

The powers of each authority shall be vested in the commissioners thereof in office from time to time. Three (3) commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The board of commissioners shall elect which member shall be chairman and thereafter fill any vacancy by like election. An authority shall select from among its commissioners a vice chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or the county or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

In the event that a directly assisted commissioner ceases to be directly assisted by the authority for which he/she serves as commissioner, said person shall then become disqualified to serve that authority as a directly assisted commissioner and shall be replaced as commissioner by a person who is directly assisted by the authority if federal law then requires that authority to have a directly assisted commissioner.

SOURCES: Codes, 1942, § 7298; Laws, 1938, ch. 338, § 4; Laws, 1946, ch. 471, § 1; Laws, 1999, ch. 323, § 1; Laws, 2002, ch. 484, § 1, eff from and after passage (approved Mar. 27, 2002.)

ATTORNEY GENERAL OPINIONS

It is apparent that "reappointments" which occurred in years past, without action of town board of aldermen, were not in conformity with law, and every commissioner so "reappointed" was holdover, or de facto, officer, holding office until his or her successor was validly appointed and qualified; while acts of holdover or de facto officer are legally binding, individual so acting is in no way entitled to complete term of that office when successor has been appointed. Richardson, Oct. 26, 1990, A.G. Op. #90-0521.

City housing authority commissioners must reside within the geographical boundaries of the housing authority. Patten, Feb. 14, 1992, A.G. Op. #92-0048.

Under Section 43-33-7, a commissioner of the housing authority is prohibited from acting as a city employee, or performing services normally performed by a city employee, through a third party contract or otherwise, so long as he or she continues to serve as commissioner. Romeo, May 10, 1995, A.G. Op. #95-0213.

The council in a mayor/council municipality does not have authority to provide by ordinance that a person may not serve simultaneously on more than one commission, board or authority in situations where state law does not set forth that restriction. Doty, March 22, 1996, A.G. Op. #96-0145.

Regional housing authority commissioners are entitled to such per diem compensation as is provided to city and county housing authority commissioners pursuant to this section. Trapp, May 6, 1999, A.G. Op. #99-0223.

If a housing authority has hired an executive director or other employee and has set the salary of that individual in an employment agreement or contract, the authority is precluded from paying any additional compensation to that individual, regardless of extra duties which may be performed by that individual; the proper mechanism for addressing this would be to renegotiate the terms of the employment/contract of that individual to take these duties into consideration. McGriggs, Apr. 27, 2001, A.G. Op. #01-0243.

There is nothing that would prohibit a "holdover" housing authority commissioner from holding an office on the commission such as chairman or vice-chairman during the period he or she is legitimately "holding over" as a commissioner. Johnson, Mar. 7, 2003, A.G. Op. #03-0101.

Employees of recreation authority are not municipal employees and service as a housing authority commissioner is not prohibited by simultaneous employment by the recreation authority. Turnage, Dec. 27, 2005, A.G. Op. 05-0623.

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

§ 43-33-9. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983. [Codes, 1942, § 7299; Laws, 1938, ch. 338, § 5; Laws, 1952, ch. 369, § 1]

Editor's Note — Former § 43-33-9 prohibited the commissioner or any employees of the authority from having any interest in any projects or property associated with the work of the authority.

§ 43-33-11. Powers of authority.

An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this article, to carry into effect the powers and purposes of the authority.

(b) Within its area of operation: to prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this article or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this article) to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled.

(f) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(g) Acting through one or more commissioners or other person or persons designated by the authority: to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material to its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(h) To make payments to public bodies in the state in such amounts as it finds desirable, notwithstanding any statutory limitation on the amount of such payments.

(i) To establish and operate a nonprofit corporation for housing and community development purposes.

(j) To exercise all or any part or combination of powers herein granted.

No provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the Legislature shall specifically so state.

SOURCES: Codes, 1942, §§ 7300, 7344-03; Laws, 1938, ch. 338, § 6; Laws, 1944, ch. 217, § 3; Laws, 1990, ch. 490, § 1, eff from and after July 1, 1990.

Editor's Note — Laws of 1990, ch. 490, § 2, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1991, ch. 528, § 8, amended Laws of 1990, ch. 490, § 2, so as to remove the provision for the repeal of this section.

Cross References — What constitutes homes under homestead exemption law, see § 27-33-19.

Powers of regional authorities, see § 43-33-117.

Powers of Mississippi Home Corporation, see § 43-33-717.

Construction in conjunction with Mississippi Home Corporation Act, see § 43-33-761.

Additional powers of municipalities and housing authorities with respect to community development, see § 43-35-503.

Federal Aspects — National Affordable Housing Act, see 42 USCS §§ 12701 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. Relation to other law.
2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. Relation to other law.

Mississippi Regional Housing Authority was entitled to a stay pending appeal and was not required to post a supersedeas bond under Fed. R. Civ. P. 62(f), Miss. R. Civ. P. 62(f), and Miss. Code Ann. § 11-51-101 because: (1) Miss. Code Ann. 43-33-11, which provided that an authority constituted a public body corporate and politic, that exercised public and essential governmental functions, and had all the powers necessary or convenient to carry out and effectuate its purposes, supported the conclusion that the housing authority was entitled to the exemptions; (2) the housing authority and its functions were "integral parts" of Mississippi government; and (3) the Mississippi Supreme Court recognized that a housing authority was a "governmental entity" in another context. Urban Developers, Inc. v. City of Jackson, 227 F.R.D. 464 (S.D. Miss. 2005), remanded by 468 F.3d 281, 2006 U.S. App. LEXIS 26435 (5th Cir. Miss. 2006).

2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

In proceedings to enjoin the city and a private party from proceeding with plans for the construction of dwelling units, and an agreement to lease the 184 units on completion of their construction to a municipal housing authority to be operated as low income rental projects subsidized by an agency of the federal government, was neither a form of "development" nor of "construction" within the meaning of Code 1942, § 7300.5 restricting the power of housing authorities, and was not within Code 1942, §§ 7322-21, 7322-22, and 7322-23, requiring among other things that such matter be submitted to the electors of the city and approved by a three-fifths vote of such electors. Muirhead v. Pilot Properties, Inc., 258 So. 2d 232 (Miss. 1972).

ATTORNEY GENERAL OPINIONS

Nonprofit corporation formed by Authority before repeal of law technically may not be dissolved by repeal of statute and consequent removal of Authority's power; however, Authority would no longer have power to operate nonprofit corporation. Alexander, Sept. 6, 1990, A.G. Op. #90-0663.

Because the Legislature has not specifically stated that the Residential Landlord Tenant Act applies to public housing authorities, it does not so apply, and public housing authorities may make by-laws, rules, and regulations as to the eviction of tenants, which regulations will have the force of law. Johnson, June 24, 1992, A.G. Op. #92-0438.

Regional housing authority may sell housing project to limited partnership and manage project under contract with limited partnership. Alexander, Sept. 10, 1992, A.G. Op. #92-0597.

Public Housing Authority created pursuant to Miss. Code Sections 43-33-1 et seq. is "a public body corporate and politic" within Miss. Code Section 43-33-11; therefore, when property is conveyed to Housing Authority, tax lien against property was extinguished; personal liability of prior owner of property for full year's taxes, however, may continue. Monroe, Apr. 7, 1993, A.G. Op. #93-0055.

The Commissioners of a Housing Authority have authority to contract with a nonprofit corporation to manage properties of the Housing Authority, i.e., to lease, rent, rehabilitate, and maintain the properties pursuant to § 43-33-11. A Housing Authority may not delegate discretionary, policymaking decisions or governmental powers such as eminent domain and the authority to issue bonds. Ellis, February 16, 1996, A.G. Op. #96-0080.

The Tort Claims Act is not a "law with respect to the acquisition, operation or disposition of property," and therefore a housing authority is not excluded from the requirements of the Tort Claims Act. See Sections 11-46-1(i) and 43-33-5. Hardy, March 29, 1996, A.G. Op. #96-0157.

Sections 43-33-11 and 43-33-23 authorize a Town Housing Authority to issue tax exempt multifamily housing revenue bonds in accordance with the Housing Authorities law, Section 43-33-1 et seq., in order to finance the acquisition, development, construction, equipping and furnishing of a 192 unit multi-family housing development. Woods, August 22, 1996, A.G. Op. #96-0555.

Employees of the Mississippi Regional Housing Authority No. VI may perform duties for a non profit corporation established pursuant to subsection (i) of this section while being paid with authority funds, so long as those duties are in furtherance of the statutory purpose and function of the Regional Housing Authority. McArty, April 9, 1999, A.G. Op. #99-0150.

The Mississippi Regional Housing Authority No. VI may contract with a nonprofit corporation established by the Authority pursuant to subsection (i) of this section to perform such work as collecting rents, cutting grass, repairing housing units, etc., for the corporation; however, any contract for the performance of such duties by employees of the authority and at the authority's expense may not include action that would result in a donation or gratuity being made to a third party in contravention of the express provisions of Section 66 of the Mississippi Constitution of 1890. McArty, April 9, 1999, A.G. Op. #99-0150.

There is no regulation of the amount of time that Mississippi Regional Housing Authority employees may devote to operating a nonprofit corporation established by the authority pursuant to subsection (i) of this section. McArty, April 9, 1999, A.G. Op. #99-0150.

The Mississippi Regional Housing Authority No. VI may provide funds for the establishment, including incorporation, and operation of a nonprofit corporation. McArty, April 9, 1999, A.G. Op. #99-0150.

A nonprofit corporation established by a regional housing authority pursuant to subsection (i) of this section is excluded from the provisions of the Mississippi Tort Claims Act. McArty, April 9, 1999, A.G. Op. #99-0150.

A for-profit corporation established by a nonprofit corporation that has been established by a regional housing authority pursuant to subsection (i) of this section is excluded from the provisions of the Mississippi Tort Claims Act. McArty, April 9, 1999, A.G. Op. #99-0150.

Property of a nonprofit corporation established by a regional housing authority pursuant to subsection (i) of this section is not owned by a housing authority and, therefore, can not be exempt pursuant to § 43-33-37. McArty, April 9, 1999, A.G. Op. #99-0150.

Debt of a nonprofit corporation established by a regional housing authority pursuant to subsection (i) of this section is not "bonds of an authority" and, therefore, neither the debt nor the interest thereon can be exempt from taxes pursuant to § 43-33-23. McArty, April 9, 1999, A.G. Op. #99-0150.

Pursuant to subsection (a) of this section, it is within the authority of a public housing authority to determine that a violation of state law affecting the safety of residents may be considered cause for termination of tenancy in public housing, and to so provide in its lease agreements. McAlpin, April 16, 1999, A.G. Op. #99-0170.

Housing authority of city may enter into a contract for containerized waste removal and disposal services with a cooperative service district, and the authority and service district have the authority to contract for services outside of district's service area. Barry, May 23, 2003, A.G. Op. 03-0220.

Both a city and housing authority possess the authority to exercise the power of eminent domain to acquire property to be used as a park or recreational area for the benefit of citizens of the municipality and/or residents of the housing authority properties. White, Feb. 27, 2004, A.G. Op. 04-0075.

Under the provisions of the last paragraph of this section, if a public housing authority awards contracts to other entities which will perform construction work in a public housing contract, those entities must comply with grant requirements but are not required to comply with the public purchasing laws, depending on the terms of the grant. Johnson, Oct. 29, 2004, A.G. Op. 04-0528.

A regional housing authority may convey title to property to a boys and girls club in consideration of the club's services to the community, retaining a reversionary interest in the event the property is no longer used for recreation, youth or community activities. Delcambre, Dec. 9, 2004, A.G. Op. 04-0611.

A regional housing authority has the authority by virtue of Section 43-33-11 to contract for security services with other public bodies. Trapp, Mar. 25, 2005, A.G. Op. 05-0123.

"Merger" between a regional housing authority and a private non-profit development entity authorized. Randle, Jan. 6, 2005, A.G. Op. 05-0628.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 10 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 1 (complaint in federal court — class action — by residents in slum clearance area to enjoin displacement until adequate relocation facilities provided); Form 6 (answer — in action to enjoin slum clearance project — finding of special commission established property as slum area subject to clearance and redevelopment); Forms 8, 9 (findings of fact — in connection with proposed slum clearance and urban redevelopment project).

§ 43-33-13. Operation not for profit.

It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city or the county. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived) will be sufficient (a) to pay, as the same become due, the principal and interest on the bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and (c) to create (during not less than six (6) years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve.

SOURCES: Codes, 1942, § 7301; Laws, 1938, ch. 338, § 7.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 43-33-13 requires that Housing Authority fix rentals at no higher rate than necessary, "to meet the costs of, and to provide for, maintaining and operating the projects (including the costs of any insurance) and the administrative expenses of the Authority". Alexander, Apr. 7, 1993, A.G. Op. #93-0158.

§ 43-33-15. Rentals and tenant selection.

In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(a) It may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income;

(b) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding;

(c) The dwellings in low-rent housing as defined in this article shall be available solely for families whose net annual income at the time of admission, less an exemption of one hundred dollars ($100.00) for each minor member of the family other than the head of the family and his spouse, does not exceed five (5) times the annual rental (including the value or cost to them of water, electricity, gas, other heating and cooking fuels, and other utilities) of the dwellings to be furnished such families. For the purpose of determining eligibility for continued occupancy, a public housing agency shall allow, from the net income of any family, an exemption for each minor member of the family (other than the head of the family and his spouse) of either (a) one hundred dollars ($100.00), or (b) all or any part of the annual income of such minor. For the purpose of this subparagraph, a minor shall mean a person less than twenty-one (21) years of age.

Nothing contained in this section or Section 43-33-13 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section or Section 43-33-13.

SOURCES: Codes, 1942, § 7302; Laws, 1938, ch. 338, § 8; Laws, 1950, ch. 513.

RESEARCH REFERENCES

Am Jur. 13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 21 (complaint — in federal court — class action — by residents denied admission to public housing projects because of race — for declaratory and injunctive relief); Form 24 (complaint in federal court — by mother of illegitimate children-denial of admission to housing project violates equal protection clause of Fourteenth Amendment to Constitution); Form 27 (answer — by tenant in ejection proceedings — invalidation of termination of defendant's lease in federally-assisted public housing project invalid — lack of notice as to reason — as reprisal for activities in connection with tenants' organization-violation of rights of free speech and assembly).

§ 43-33-16. Prohibition against use of fraudulent means to obtain public housing.

(1) Any person who obtains or attempts to obtain, or who establishes or attempts to establish, eligibility for, and any person who knowingly or intentionally aids or abets such person in obtaining or attempting to obtain, or in establishing or attempting to establish eligibility for, any public housing, or a reduction in public housing rental charges, or any rent subsidy, to which such person would not otherwise be entitled, by means of a false statement, failure to disclose information, impersonation, or other fraudulent scheme or device shall be guilty of a misdemeanor and, upon conviction, shall be punished as for a misdemeanor. As used in this section "public housing" shall mean housing which is constructed, operated or maintained by the state, a county, a municipal corporation, a housing authority, or by any other political subdivision or public corporation of the state or its subdivisions.

(2) Notice of this section shall be printed on the application forms for public housing in the state, and it shall be displayed in the office where such application is made.

SOURCES: Laws, 1979, ch. 384, §§ 1-2, eff from and after July 1, 1979.

Cross References — Rental and tenant selection restrictions, see § 43-33-15.

§ 43-33-17. Cooperation of authorities.

Any two (2) or more authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects located within the area of operation of any one (1) or more of said authorities. For such purpose an authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or cooperating with it, to act on its behalf with respect to any or all of such powers. Any authorities joining or cooperating with one another may by resolutions appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities.

SOURCES: Codes, 1942, § 7303; Laws, 1938, ch. 338, § 9; Laws, 1942, ch. 233, § 2.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment § 13.

§ 43-33-19. Eminent domain.

An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this article after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in Chapter 27, Title 11, of the Mississippi Code of 1972; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner; no real property belonging to the city, the county, the state or any political subdivision thereof may be acquired without its consent.

SOURCES: Codes, 1942, § 7304; Laws, 1938, ch. 338, § 10.

Cross References — Right of eminent domain, generally, see §§ 11-27-1 et seq.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Eminent Domain §§ 78 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 7 (defense — in eminent domain proceedings to acquire property for urban redevelopment — lack of evidence to support finding that area is blighted).

CJS. 29A C.J.S., Eminent Domain § 24.

JUDICIAL DECISIONS

1. Construction with other law.

Because a developer had not been denied compensation for an alleged taking of lease contracts, principally because it had not sought such compensation through Mississippi procedures, its federal takings claims against a regional housing authority and the housing authority's interim executive director were not ripe for review; since the housing authority clearly wielded the power of eminent domain through Miss. Code Ann. § 43-33-19, Mississippi had long provided for actions in inverse condemnation, and Mississippi courts provided plaintiffs with a cause of action for regulatory takings, there was nothing to suggest that Mississippi law unquestionably afforded the developer no remedy. Urban Developers LLC v. City of Jackson, 468 F.3d 281 (5th Cir. 2006).

§ 43-33-21. Planning, zoning and building laws.

All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

SOURCES: Codes, 1942, § 7305; Laws, 1938, ch. 338, § 11.

Cross References — Standard state zoning law, see §§ 17-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

A building permit to construct a bulk oil and gas distribution plant was improperly revoked after the adoption of an urban renewal plan which prohibited such use, where the adoption of the plan did not ipso facto amend or change the zoning laws, to which all housing projects were subject, and where the housing authority failed to comply with the statutory provisions for effecting a change in the zoning laws. Key Petro., Inc. v. Housing Auth., 357 So. 2d 920 (Miss. 1977).

RESEARCH REFERENCES

ALR. Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

§ 43-33-23. Bonds.

An authority shall have power to issue bonds from time to time, in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable: (a) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds; (b) exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds; or (c) from its revenues generally. Any such bonds may be additionally secured by a pledge of any grant or contributions from the federal government or other source, or a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state on their face) shall not be a debt of the city, the county, the state or any political subdivision thereof and neither the city or the county, nor the state or any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes.

SOURCES: Codes, 1942, § 7306; Laws, 1938, ch. 338, § 12.

Cross References — Loans authorized for housing financing, see §§ 43-33-301 et seq.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use].
II. Under Former Law.
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

The petitioners were not entitled to a writ of mandamus to require a city to call an election under Code 1942, § 7322-23, pursuant to the issuance of bonds for the purpose of carrying out an urban renewal project, where in their petition for the writ they did not allege and claim that they had an interest separate from or in excess of that of the general public or that they would suffer any special legal injury or personal damages apart from the body of citizens of the city as a whole. Wilson v. City of Laurel, 249 So. 2d 801 (Miss. 1971).

ATTORNEY GENERAL OPINIONS

Sections 43-33-11 and 43-33-23 authorize a Town Housing Authority to issue tax exempt multifamily housing revenue bonds in accordance with the Housing Authorities law, Section 43-33-1 et seq., in order to finance the acquisition, development, construction, equipping and furnishing of a 192 unit multi-family housing development. Woods, August 22, 1996, A.G. Op. #96-0555.

Debt of a nonprofit corporation established by a regional housing authority pursuant to § 43-33-11(i) is not "bonds of an authority" and, therefore, neither the debt nor the interest thereon can be exempt from taxes pursuant to this section. McArty, April 9, 1999, A.G. Op. #99-0150.

§ 43-33-25. Form and sale of bonds.

Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not to exceed that allowed in Section 75-17-103, Mississippi Code of 1972, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issued. The interest rate of any one (1) interest coupon shall not exceed the maximum interest rate allowed on such bonds.

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (⅒ of 1%). The denomination, form, and place, or places, of payment of such bonds shall be fixed in the resolution or ordinance of the governing authorities issuing such bonds. Such bonds shall be executed by the manual or facsimile signature of the chairman and secretary of such authority, with the seal of the authority impressed, imprinted or reproduced thereon. At least one (1) signature on each bond shall be a manual signature, as specified in the resolution. The coupons may bear only the facsimile signatures of such chairman and secretary. No bonds shall be issued and sold under the provisions of this article for less than par and accrued interest.

The bonds may be sold at not less than par at public sale held after notice published once at least five (5) days prior to such sale in a newspaper having a general circulation in the area of operation and in a financial newspaper published in the City of Jackson, Mississippi, or in the City of New York, New York. Such bonds may be sold at not less than par to the federal government or to a federally chartered corporation at private sale without any public advertisement.

In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable.

In any suit, action or proceedings, involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character, and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of this article.

SOURCES: Codes, 1942, § 7307; Laws, 1938, ch. 338, § 13; Laws, 1970, ch. 471, § 1; Laws, 1974, ch. 358, § 2; Laws, 1981, ch. 461, § 1; Laws, 1982, ch. 434,

§ 22; Laws, 1983, ch. 541, § 27; Laws, 2005, ch. 308, § 1, eff from and after July 1, 2005.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 43-33-27. Provisions of bonds, trust indentures, and mortgages.

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) To mortgage all or any part of its real or personal property, then owned or thereafter acquired.

(c) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(e) To covenant (subject to the limitations contained in this article) as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(f) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(h) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and use, operate and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustees; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any portion of them may enforce any covenant or rights securing or relating to the bonds.

(j) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

SOURCES: Codes, 1942, § 7308; Laws, 1938, ch. 338, § 14.

RESEARCH REFERENCES

ALR. Children's day-care use as violation of restrictive covenant. 29 A.L.R.4th 730.

Restrictive covenant limiting land use to "private residence" or "private residential purposes": interpretation and application. 43 A.L.R.4th 71.

§ 43-33-28. Issuance of leased housing revenue refunding bonds by certain housing authorities.

Any housing authority organized under Sections 43-33-1 through 43-33-53 which is composed of ten (10) counties in the northeastern part of the State of Mississippi with counties bordering both the State of Tennessee and the State of Alabama and more specifically domiciled in a county where U. S. Highway 45 and U. S. Highway 72 intersect is hereby authorized and empowered to issue negotiable leased housing revenue refunding bonds in a principal amount not exceeding nineteen million dollars ($19,000,000.00) for the purpose of refunding its outstanding sixteen million dollars ($16,000,000.00) principal amount housing bonds, Series 1970, dated as of December 1, 1970, ("the Series 1970 bonds"), including interest thereon and applicable redemption premiums and paying other obligations and expenses of the authority necessary for the completion of one thousand thirty-three (1,033) low-rent dwelling units proposed to be financed from the proceeds of the Series 1970 bonds. The proceeds of any such refunding bonds shall be deposited with the trustee named in the bonds to be refunded, and pending the application thereof to the payment of the principal of and interest on and redemption premium on the bonds to be refunded shall be invested and reinvested only in (a) obligations of, or obligations the principal of and interest on which is guaranteed by, the United States of America; (b) obligations of any agency or instrumentality of the United States of America; or (c) in certificates of deposit issued by either a state or national bank which is a qualified depository of the State of Mississippi bearing interest at any rate which may be agreed upon, which certificates of deposit shall be secured by a pledge of any of the obligations authorized by law for the securing of public deposits and having at all times an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured.

All interest or other increment received on or on account of all such investments shall be deposited in and become a part of the fund held by the trustee for the payment and redemption of the bonds to be refunded. Provided that the trustee may, after making due provisions for the payment and redemption of the Series 1970 bonds, disburse any portion of the principal proceeds in excess of sixteen million dollars ($16,000,000.00) for payment of obligations and expenses of the authority necessary for the completion of the low-rent dwelling units and for payment of expenses incurred by the issuance of the bonds herein authorized; provided, that attorney's fees shall not exceed those set forth in Section 57-1-31, Mississippi Code of 1972.

The bonds herein authorized shall be authorized by a resolution adopted by the board of commissioners of the authority; may bear such date; may be of such denomination; may mature at such time or times, not exceeding twenty (20) years after the date thereof; and may be redeemable on such terms; all as may be determined by such resolution and in compliance with the provisions of Section 43-33-25. Such bonds shall not bear a greater overall maximum interest rate to maturity than six percent (6%) per annum. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. The interest rate of any one (1) interest coupon shall not exceed seven percent (7%).

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (1⁄10 of 1%), and a zero rate of interest cannot be named. No bonds shall be issued and sold under the provisions of this section for less than par and accrued interest.

The bonds herein authorized shall be payable solely from certain revenues derived by the authority in connection with the low-rent housing project for which the Series 1970 bonds were issued, including annual contributions from the United States of America, income from notes and mortgages purchased from the proceeds of the Series 1970 bonds and the bonds herein authorized, and surplus money available after the Series 1970 bonds shall have been retired from the trust created pursuant to this section and may be secured by a trust indenture. The bonds herein authorized shall not be obligations of the State of Mississippi or of any county or municipality therein, but shall be solely the obligations of the authority.

SOURCES: Laws, 1973, ch. 445, § 1, eff from and after passage (approved March 30, 1973).

§ 43-33-29. Remedies of an obligee of authority.

An obligee of an authority shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this article.

(b) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said authority.

SOURCES: Codes, 1942, § 7309; Laws, 1938, ch. 338, § 15.

Cross References — Remedy of mandamus, generally, see § 11-41-1.

§ 43-33-31. Additional remedies conferable by authority.

An authority shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction:

(a) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(b) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct.

(c) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

SOURCES: Codes, 1942, § 7310; Laws, 1938, ch. 338, § 16.

§ 43-33-33. Exemption of property from execution sale.

All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property. However, the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues.

SOURCES: Codes, 1942, § 7311; Laws, 1938, ch. 338, § 17.

Cross References — Exempt property, generally, see § 85-3-1.

§ 43-33-35. Aid from federal government.

In addition to the powers conferred upon an authority by other provisions of this article, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this article to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such authority.

SOURCES: Codes, 1942, § 7312; Laws, 1938, ch. 338, § 18.

Cross References — Additional powers of municipalities and housing authorities with respect to community development, see § 43-35-503.

Federal Aspects — National affordable housing act, see 42 USCS §§ 12701 et seq.

§ 43-33-37. Tax exemption and payments in lieu of taxes.

The property of an authority is declared to be public property used for essential public and governmental purposes and such property of an authority shall be exempt from all taxes and special assessments levied by the city, the county, the state or any political subdivision thereof. However, in lieu of such taxes an authority may make annual payments in lieu of taxes and special assessments to the city or county or any such political subdivision for improvements, services and facilities furnished by such city, county or political subdivision for the benefit of a housing project. Each such annual payment in lieu of taxes shall be made after the end of the fiscal year established for a housing project, and may be in an amount not exceeding ten percent (10%) of the aggregate shelter rent charged by the local authority in respect to such project during such fiscal year. However, upon failure of the local authority to make any such payment in lieu of taxes, no lien against any project or assets of the local authority shall attach.

No payment for any year shall be in excess of the amount of the real property taxes which would have been paid for such year if the project were not exempt from taxation.

SOURCES: Codes, 1942, § 7313; Laws, 1938, ch. 338, § 19; Laws, 1948, ch. 451, § 1; Laws, 1950, ch. 514; Laws, 1958, ch. 551; Laws, 1974, ch. 480, eff from and after July 1, 1974.

Cross References — Tax exemptions, generally, see §§ 27-31-1 et seq.
Federal payments in lieu of taxes, see §§ 27-37-1 et seq.
Sales tax, see §§ 27-65-1 et seq.
Use taxes, see §§ 27-67-1 et seq.

ATTORNEY GENERAL OPINIONS

The tax exemption authorized by Section 43-33-37 applies only to property owned by an authority and not to property owned by a limited partnership of which the authority is a member partner. Schmidt, February 23, 1996, A.G. Op. #96-0054.

Property of a nonprofit corporation established by a regional housing authority pursuant to § 43-33-11(i) is not owned by a housing authority and, therefore, cannot be exempt pursuant to this section. McArty, April 9, 1999, A.G. Op. #99-0150.

While a housing authority would clearly be exempt from a property tax for garbage collection, no authority can be found exempting housing authorities, or other public entities, from the payment of a fee imposed by the county to cover the cost of garbage collection. Turnage, June 2, 2006, A.G. Op. 06-0178.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 26 et seq.

§ 43-33-39. Housing bonds to be legal investments, legal security and negotiable.

The state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the Housing Authorities Law, or any law amendatory or supplemental thereto, of the State of Mississippi or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state; it being the purpose of this article to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations, and that any such bonds or other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state. However, nothing contained in this article with regard to legal investments shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

SOURCES: Codes, 1942, § 7314; Laws, 1938, ch. 338, § 20; Laws, 1942, ch. 233, § 3.

Cross References — Loans authorized for housing financing, see §§ 43-33-301 et seq.

§ 43-33-41. Reports.

At least once a year, an authority shall file with the clerk a report of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this article.

SOURCES: Codes, 1942, § 7315; Laws, 1938, ch. 338, § 21.

§ 43-33-43. Cooperation in undertaking housing projects.

For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

(a) Dedicate, sell, convey or lease any of its interest in any property, or grant easement, licenses or any other rights or privileges therein, in accordance with the provisions of Section 29-1-1, to a housing authority or the federal government;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(d) Plan or replan, zone or rezone any part of such state public body; make exceptions from building regulations and ordinances; any city, town or village also may change its map;

(e) Cause services to be furnished to the housing authority of the character which the state public body is otherwise empowered to furnish;

(f) Enter into agreements with respect to the exercise by the state public body of its powers relating to the repair, elimination or closing of unsafe, unsanitary or unfit dwellings;

(g) Purchase any of the bonds of a housing authority or legally invest in these bonds any funds belonging to or within the control of the state public body, and exercise all of the rights of any holder of these bonds;

(h) Do all things necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of housing projects;

(i) Incur the entire expense of any public improvements made by the state public body in exercising the powers granted in this article; and

(j) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary), with a housing authority respecting action to be taken by the state public body pursuant to any of the powers granted by this article. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement of public building.

(k) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to its construction.

SOURCES: Codes, 1942, § 7316; Laws, 1938, ch. 338, § 22; Laws, 1993, ch. 615, § 3, eff from and after July 1, 1993.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment § 13.

§ 43-33-45. Agreements as to payments by housing authority.

In connection with any housing project located wholly or partly within the area in which it is authorized to act, any state public body may agree with a housing authority or the federal government that a certain sum, or that no sum, shall be paid by the authority in lieu of taxes for any year or period of years.

SOURCES: Codes, 1942, § 7317; Laws, 1938, ch. 338, § 23; Laws, 1948, ch. 451, § 2.

§ 43-33-47. Advances to housing authority.

Any city, town, village or county located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to such authority or to agree to take such action. Such housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it.

SOURCES: Codes, 1942, § 7318; Laws, 1938, ch. 338, § 24.

§ 43-33-49. Procedure for exercising powers.

The exercise by a state public body of the powers herein granted may be authorized by a resolution of the governing body of such state public body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

SOURCES: Codes, 1942, § 7319; Laws, 1938, ch. 338, § 25.

§ 43-33-51. Supplemental nature of article.

The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law.

SOURCES: Codes, 1942, § 7320; Laws, 1938, ch. 338, § 26.

§ 43-33-53. Article controlling.

In so far as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

SOURCES: Codes, 1942, § 7322; Laws, 1938, ch. 338, § 28.

SECOND SUPPLEMENTAL HOUSING AUTHORITY LAW

SEC.
43-33-61. Payments by housing authorities to local bodies.
43-33-63. Housing research and studies.
43-33-65. Short title.
43-33-67. Supplemental nature of law.
43-33-69. Law as controlling.

§ 43-33-61. Payments by housing authorities to local bodies.

Notwithstanding any limitations in other laws, an authority may agree to make such payments to the city or county, the state, or any political subdivision thereof (which payments such bodies are hereby authorized to accept) as the authority finds consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of Sections 43-33-61 through 43-33-69 and the Housing Authorities Law.

SOURCES: Codes, 1942, § 7322-01; Laws, 1946, ch. 403, § 5.

Cross References — Additional powers of municipalities and housing authorities with respect to community development, see § 43-35-503.

§ 43-33-63. Housing research and studies.

In addition to all its other powers, a housing authority may, within its area of operation, undertake and carry out studies and analyses of the housing needs, and of the meeting of such needs (including data with respect to population and family groups and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages and other factors affecting the local housing needs and the meeting thereof) and make the results of such studies and analyses available to the public and the building, housing and supply industries; and may also engage in research and disseminate information on the subject of housing.

SOURCES: Codes, 1942, § 7322-02; Laws, 1946, ch. 403, § 6.

§ 43-33-65. Short title.

Sections 43-33-61 and 43-33-63 may be referred to as the "Second Supplemental Housing Authorities Law." The Housing Authorities Law, the Supplemental Housing Authorities Law and the Second Supplemental Housing Authorities Law may be referred to as the "Housing Authorities Law."

SOURCES: Codes, 1942, § 7322-03; Laws, 1946, ch. 403, § 7.

Cross References — Housing Authorities Law, see §§ 43-33-1 through 43-33-53.

Supplemental Housing Authorities Law (regional housing authorities), see §§ 43-33-101 et seq.

§ 43-33-67. Supplemental nature of law.

The powers conferred by Sections 43-33-61 and 43-33-63 shall be in addition and supplemental to the powers conferred by any other law.

SOURCES: Codes, 1942, § 7322-04; Laws, 1946, ch. 403, § 8.

§ 43-33-69. Law as controlling.

Insofar as the provisions of this second supplemental Housing Authorities Law are inconsistent with the provisions of any other law, the provisions of this law shall control.

SOURCES: Codes, 1942, § 7322-06; Laws, 1946, ch. 403, § 10.

HOUSING TASK FORCE

SEC.
43-33-75. Housing Task Force; membership; purpose; hearings; chairman; authorization to hire staff; funding.

§ 43-33-75. Housing Task Force; membership; purpose; hearings; chairman; authorization to hire staff; funding.

(1) The Governor shall appoint a Housing Task Force of not more than twenty-five (25) persons representing organizations or persons interested in increasing the availability of quality, affordable housing in the state. The Governor shall include at least two (2) representatives from each of the following associations: the Homebuilders Association of Mississippi, the Mississippi Association of Realtors and the Mississippi Bankers Association. At least one (1) person shall be named to represent each of the following organizations or interests: insurance, architecture, the U.S. Department of Housing and Urban Development, the Farmers Home Administration, regional public housing authorities, the Mississippi Municipal Association, the Mississippi Association of Supervisors, the Mississippi Housing Finance Corporation, the Mississippi Association of Planning and Development Districts, the Mississippi Manufactured Housing Association, the Veterans Home Purchase Board or its successor, private nonprofit organizations active in housing issues, and concerned citizens.

(2) The task force shall study housing conditions and needs in Mississippi and furnish to the Governor and Legislature a report on its findings, including a comprehensive policy and plan to improve housing in the state, by November 15, 1988. The task force may consider, but is not limited to, the following: the condition and affordability of existing housing in the state; current and projected demand for single and multifamily housing; methods to improve the operation and effectiveness of federal, state and local public and private

programs in reducing the number of substandard housing units, increasing the number of standard units, reducing the costs, and improving the safety of housing; methods to finance the production of new, affordable units and the rehabilitation of substandard units; and the need for a single agency to implement housing policy in the state. The report of the task force shall identify changes in existing statutes and propose legislation establishing new authority where necessary to carry out its recommendations.

(3) Regional public hearings may be called by the task force to inform citizens about the work of the task force and to receive public comments about housing in the state.

(4) The Governor shall name the chairman who shall call meetings and coordinate the work of the task force.

(5) The Governor's Office of Federal-State Programs is authorized to employ or contract for the necessary professional and technical staff to support the task force in carrying out this section. The task force may request the cooperation of public or private agencies as needed to carry out this section.

(6) The Governor's office is authorized to expend monies made available to it from any source public or private to carry out the purpose of this section.

SOURCES: Laws, 1988, ch. 318, eff from and after passage (approved April 13, 1988).

Editor's Note — Section 7-1-251 provides that wherever the term "Office of the Governor, Federal-State Programs" appears in any law the same shall mean the Department of Finance and Administration.

CONTRACTS WITH THE UNITED STATES OR ITS AGENCIES [REPEALED]

SEC.
43-33-81 through 43-33-91. Repealed.

§§ 43-33-81 through 43-33-91. Repealed.

Repealed by Laws, 1980, ch. 441, § 5, eff from and after its passage (approved May 2, 1980).

§ 43-33-81. [En Laws, 1962, 2d Ex Sess, ch. 27]
§ 43-33-83. [En Laws, 1966, ch. 600, § 1]
§ 43-33-85. [En Laws, 1966, ch. 600, § 2]
§ 43-33-87. [En Laws, 1966, ch. 600, § 3]
§ 43-33-89. [En Laws, 1966, ch. 600, § 4]
§ 43-33-91. [En Laws, 1966, ch. 600, § 5]

Editor's Note — Former § 43-33-81 prohibited contracting in Mississippi with agencies of the United States government for the development of dwelling accommodations for residential use under either the state Housing Authorities Law or the state Urban Renewal Law, with certain exceptions.

Former § 43-33-83 authorized municipalities to contract with agencies of the United States government with respect to housing projects or urban renewal projects under the state's housing and urban renewal laws.

Former § 43-33-85 required municipalities proposing to enter into urban renewal or public housing contracts with federal government agencies to adopt and publish a resolution declaring its intention and stating the purposes to be served thereby.

Former § 43-33-87 required a proposal by a municipality to enter into an urban renewal or public housing contract with the federal government to be approved by a three-fifths (⅗) majority in a public referendum within the municipality.

Former § 43-33-89 provided the details of conducting a special municipal election on a proposed urban renewal or public housing contract and set out the form of ballot to be used.

Former § 43-33-91 exempted municipalities authorized prior to May 23, 1966 to enter into urban renewal or public housing contracts from compliance with former §§ 43-33-83 through 43-33-89.

ARTICLE 3.

REGIONAL AUTHORITIES.

SEC.

43-33-101. Short title.
43-33-103. Creation of regional housing authority.
43-33-105. Area of operation of county and regional housing authorities.
43-33-107. Increasing area of operation of regional housing authority.
43-33-109. Decreasing area of operation of regional housing authority.
43-33-111. Housing authority for county excluded from regional authority.
43-33-113. Public hearing to create regional authority or change its area of operation.
43-33-115. Commissioners of regional housing authority.
43-33-117. Powers of regional housing authority.
43-33-119. Rural housing projects.
43-33-121. Housing applications by farmers.
43-33-123. "Farmers of low income" defined.
43-33-125. Consolidated housing authority.
43-33-127. Housing authority operations in other municipalities.
43-33-129. Findings required for authority to operate in municipality.
43-33-131. Meetings and residence of commissioners.
43-33-133. Agreement to sell as security for obligations to federal government.
43-33-135. Supplemental nature of article.
43-33-137. Article controlling.

§ 43-33-101. Short title.

Sections 43-33-103 through 43-33-133, inclusive, of this article may be referred to as the "Supplemental Housing Authorities Law."

SOURCES: Codes, 1942, § 7339; Laws, 1942, ch. 233, § 20; Laws, 1946, ch. 403, § 4.

Cross References — Housing Authorities Law, see §§ 43-33-1 et seq.

Urban renewal, see §§ 43-35-1 et seq.

Second Supplemental Housing Authorities Law, see §§ 43-33-61 through 43-33-69.

Additional powers of municipalities and housing authorities with respect to community development, see § 43-35-503.

Federal Aspects — National Affordable Housing Act, see 42 USCS §§ 12701 et seq.

ATTORNEY GENERAL OPINIONS

Employees of a regional housing authority are employees of a public body corporate and politic that is responsible for governmental functions in a geographic area smaller than the state; thus, employees of a regional housing authority are simply considered public employees. Dawkins, Feb. 7, 2003, A.G. Op. #02-0715.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 1 et seq.

§ 43-33-103. Creation of regional housing authority.

If the board of supervisors of each of two (2) or more contiguous counties by resolution declares that there is a need for one (1) housing authority to be created for all of such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, a public body corporate and politic to be known as a regional housing authority shall thereupon exist for all of such counties and exercise its powers and other functions in such counties; and thereupon each county housing authority created for each of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided. The board of supervisors of a county shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any bonds, notes or other evidences of indebtedness outstanding unless, first, all holders of such evidences of indebtedness consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such evidences of indebtedness, and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided. When the above two (2) conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds; nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of supervisors of each of two (2) or more contiguous counties shall by resolution declare that there is a need for one (1) regional housing authority to be created for all of such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, if such board of supervisors finds (and only if it finds) (a) that unsanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford and (b) that a regional housing authority would be a more efficient or economical administrative unit than the housing authority of such county to carry out the purposes of this article and the Housing Authorities Law in such county.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have become created as a public body corporate and politic and to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the board of supervisors of each of the counties creating the regional housing authority declaring the need for the regional housing authority. Each such resolution shall be deemed sufficient if it declares that there is need for the regional housing authority and finds in substantially the foregoing terms (no further detail being necessary) that the conditions enumerated above in (a) and (b) exist. A copy of such resolution of the board of supervisors of a county, duly certified by the county clerk of such county, shall be admissible in evidence in any suit, action, or proceeding.

SOURCES: Codes, 1942, § 7323; Laws, 1942, ch. 233, § 4; Laws, 1944, ch. 218, § 1.

Cross References — Housing authorities, generally, see § 43-33-5.

Increasing area of operation of regional housing authority, see § 43-33-107.

Requirement that public hearing be held before county board of supervisors adopts resolution authorized by this section, see § 43-33-113.

Urban renewal authority, see § 43-35-33.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 10 et seq.

§ 43-33-105. Area of operation of county and regional housing authorities.

The area of operation of a housing authority created for a county shall include all of the county for which it is created and the area of operation of a regional housing authority shall include (except as otherwise provided elsewhere in this article) all of the counties for which such regional housing authority is created and established. A county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution shall have been adopted by the governing body of such city (and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city) declaring that there is a need for the county or regional housing authority to exercise its powers within such city.

SOURCES: Codes, 1942, § 7324; Laws, 1942, ch. 233, § 5.

Cross References — Requirement that public hearing be held before governing body of municipality adopts resolution as provided in this section, see § 43-33-129.

ATTORNEY GENERAL OPINIONS

Because administration of a Section 8 rental assistance program does not fit within the definition of a "housing project or projects" as that term is defined in Section 43-33-1, a regional housing authority was not required to obtain the permission of the housing authority of a city and the governing authorities of the city to administer a Section 8 program; thus, whether resolutions are rescinded would have no bearing on the continued administration of a Section 8 program by the regional housing Authority within the limits of the city. Barry, Feb. 14, 2003, A.G. Op. #03-0065.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 16 et seq.

§ 43-33-107. Increasing area of operation of regional housing authority.

The area of operation of a regional housing authority shall be increased from time to time to include one (1) or more additional contiguous counties not already within a regional housing authority if the board of supervisors of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the board of supervisors of each such additional county or counties each adopt a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, the county housing authority created for each such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided. However, such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any bonds, notes or other evidences of indebtedness outstanding unless first, all holders of such evidences of indebtedness consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such evidences of indebtedness, and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided. When the above conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, agreements, obligations, and property of such county housing authority shall be in the name of and vest in such regional housing authority, all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds; nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of supervisors of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the board of supervisors of each such additional county or counties shall by resolution declare that there is a need for the inclusion of such county or counties in the area of operation of the regional housing authority, if (a) the board of supervisors of each such additional county or counties finds that unsanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford and (b) the board of supervisors of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the board of supervisors of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit to carry out the purposes of this article and the Housing Authorities Law if the area of operation of the regional housing authority is increased to include such additional county or counties.

SOURCES: Codes, 1942, § 7325; Laws, 1942, ch. 233, § 6; Laws, 1944, ch. 218, § 2.

Cross References — Requirement that public hearing be held before county board of supervisors adopts resolution authorized by this section, see § 43-33-113.

Consolidated housing authority, see § 43-33-125.

ATTORNEY GENERAL OPINIONS

In the event that both findings under subsections (a) and (b) of this section were made following public hearings, a contiguous county could become a member of a regional housing authority. Schmidt III, August 6, 1999, A.G. Op. #99-0326.

§ 43-33-109. Decreasing area of operation of regional housing authority.

The area of operation of a regional housing authority shall be decreased from time to time to exclude one (1) or more counties from such area if the board of supervisors of each of the counties in such area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area. No action may be taken pursuant to this section if the regional housing authority has outstanding any bonds, notes or other evidences of indebtedness, unless first, all holders of such evidences of indebtedness consent in writing to such action. If such action decreases the area of operation of the regional housing authority to only one (1) county, such authority shall thereupon constitute and become a housing authority for such county, in the same manner as though such authority were created by and authorized to transact business and exercise its powers pursuant to Section 43-33-5 of the Housing Authorities Law, and the commissioners of such authority shall be thereupon appointed as provided for the appointment of commissioners of a housing authority created for a county.

The board of supervisors of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that there is a need for excluding a county or counties from such area if: (a) each such board of supervisors of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that (because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded) the regional housing authority would be a more efficient or economical administrative unit to carry out the purposes of this article and the Housing Authorities Law if such county or counties were excluded from such area, and (b) the board of supervisors of each such county or counties to be excluded and the commissioners of the regional housing authority each also find that (because of the aforesaid changed facts) the purposes of this article and the Housing Authorities Law could be carried out more efficiently or economically in such county or counties if the area of operation of the regional housing authority did not include such county or counties.

Any property held by a regional housing authority within a county or counties excluded from the area of operation of such authority, as herein provided, shall (as soon as practicable after the exclusion of said county or counties respectively) be disposed of by such authority in the public interest.

SOURCES: Codes, 1942, § 7326; Laws, 1942, ch. 233, § 7.

Cross References — Requirement that public hearing be held before county board of supervisors adopts resolution authorized by this section, see § 43-33-113.

§ 43-33-111. Housing authority for county excluded from regional authority.

At any time after a county or counties is excluded from the area of operation of a regional housing authority as provided in Section 43-33-109, the board of supervisors of any such county may adopt a resolution declaring that there is a need for a housing authority in the county, if the board shall find such need according to the provisions of Section 43-33-5 of the Housing Authorities Law. Thereupon a public body corporate and politic to be known as the housing authority of the county shall exist for such county and may transact business and exercise its powers in the same manner as though created by said Section 43-33-5. Nothing contained herein shall be construed as preventing such county from thereafter being included within the area of operation of a regional housing authority as provided in Sections 43-33-103 or 43-33-107 of this article.

SOURCES: Codes, 1942, § 7327; Laws, 1942, ch. 233, § 8.

§ 43-33-113. Public hearing to create regional authority or change its area of operation.

The board of supervisors of a county shall not adopt any resolution authorized by Sections 43-33-103, 43-33-107 or 43-33-109 of this article unless a public hearing has first been held. The clerk of such county shall give notice of the time, place, and purpose of the public hearing at least ten (10) days prior to the day on which the hearing is to be held, in a newspaper published in such county, or if there is no newspaper published in such county, then in a newspaper published in the state and having a general circulation in such county. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of such county and to all other interested persons.

In determining whether dwelling accommodations are unsafe or unsanitary the board of supervisors of a county shall take into consideration the safety and sanitation of dwellings, the light and air space available to the inhabitants of such dwellings, the degree of overcrowding, the size and arrangement of the rooms and the extent to which conditions exist in such dwellings which endanger life or property by fire or other causes.

In connection with the issuance of bonds or the incurring of other obligations, a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase or decrease of its area of operation.

SOURCES: Codes, 1942, § 7328; Laws, 1942, ch. 233, § 9.

§ 43-33-115. Commissioners of regional housing authority.

The board of supervisors of each county included in a regional housing authority shall appoint one (1) person as a commissioner of such authority, and each such commissioner to be first appointed by the board of supervisors of a county may be appointed at or after the time of the adoption of the resolution declaring the need for such regional housing authority or declaring the need for the inclusion of such county in the area of operation of such regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as provided above, the board of supervisors of each such county shall thereupon appoint one (1) additional person as a commissioner of the regional housing authority. The board of supervisors of each county shall appoint the successor of the commissioner appointed by it. A certificate of the appointment of any such commissioner shall be filed with the clerk of the county, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed by the board of supervisors of such county shall be thereupon abolished.

If the area of operation of a regional housing authority consists at any time of an even number of counties, the commissioners of the regional housing authority appointed by the boards of supervisors of such counties shall appoint one (1) additional commissioner whose term of office shall be as herein provided for a commissioner of a regional housing authority except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties. The commissioners of such authority appointed by the boards of supervisors of such counties shall likewise appoint each person to succeed such additional commissioner; the term of office of such person begins during the terms of office of the commissioner appointing him. A certificate of the appointment of any such additional commissioner of such regional housing authority shall be filed with the other records of the regional housing authority and shall be conclusive evidence of the due and proper appointment of such additional commissioner.

At least one (1) commissioner of a regional housing authority must be a person who is directly assisted by the authority if required under applicable federal law.

The commissioners of a regional housing authority shall be appointed for terms of five (5) years except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified, except as otherwise provided herein.

The commissioners shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. In the event that a directly assisted commissioner ceases to be directly assisted by the authority for which he/she serves as commissioner, said person shall then become disqualified to serve that authority as a directly assisted commissioner and shall be replaced as commissioner by a person who is directly assisted by the authority if federal law then requires that authority to have a directly assisted commissioner.

SOURCES: Codes, 1942, § 7329; Laws, 1942, ch. 233, § 10; Laws, 2002, ch. 484, § 2, eff from and after passage (approved Mar. 27, 2002.)

§ 43-33-117. Powers of regional housing authority.

Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities, and all the provisions of law applicable to housing authorities created for cities or counties and the commissioners of such authorities shall be applicable to regional housing authorities and the commissioners thereof. For such purposes, the term "mayor" or "governing body" as used in the Housing Authorities Law shall be construed as meaning "board of supervisors," unless a different meaning clearly appears from the context. A regional housing authority shall have power to select any appropriate corporate name.

SOURCES: Codes, 1942, § 7330; Laws, 1942, ch. 233, § 11; Laws, 1946, ch. 403, § 1.

Cross References — Powers of county and municipal housing authorities, see § 43-33-11.

Additional powers of municipalities and housing authorities with respect to community development, see § 43-35-503.

ATTORNEY GENERAL OPINIONS

Housing corporation owned by regional housing authority may only operate housing projects within regional housing authority's area of operation; there is no apparent authority for regional housing authority and/or nonprofit corporation which is owned by regional housing authority to own or operate nursing home. Alexander, Sept. 11, 1992, A.G. Op. #92-0598.

Employees of the Mississippi Regional Housing Authority No. VI may perform duties for a nonprofit corporation established pursuant to Section 43-33-11(i) while being paid with authority funds, so long as those duties are in furtherance of the statutory purpose and function of the Regional Housing Authority. McArty, April 9, 1999, A.G. Op. #99-0150.

A regional housing authority may convey title to property to a boys and girls club in consideration of the club's services to the community, retaining a reversionary interest in the event the property is no longer used for recreation, youth or community activities. Delcambre, Dec. 9, 2004, A.G. Op. 04-0611.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 10 et seq.

§ 43-33-119. Rural housing projects.

County housing authorities and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing on farms or in other areas outside of cities. With respect to such housing, county and regional housing authorities shall not be subject to the limitations provided in clause (c) of Section 43-33-15 of the Housing Authorities Law. Any such housing authority may rent, sell, or make loans to finance the cost of such housing, and make or accept such conveyances, purchase agreements or leases as it deems necessary to assure the achievement of the objectives of this article and the Housing Authorities Law. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding the housing and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority.

Until a purchaser makes full payment for a dwelling which is constructed by an authority on a farm, such dwelling shall continue to be the property of the authority regardless of the title to the land on which it is constructed, and such dwelling shall be exempt from taxation in the same manner as other property of the authority. Any document making land available for use by an authority shall be admitted to record, and accordingly constitute notice, in the same manner as a deed or other instrument relating to real estate.

When an authority provides a dwelling on a farm hereunder, the owner of the farm living in the dwelling under a lease or purchase agreement shall be entitled to receive the same homestead exemption as if he had title to the dwelling.

SOURCES: Codes, 1942, § 7331; Laws, 1942, ch. 233, § 12; Laws, 1946, ch. 403, § 2.

§ 43-33-121. Housing applications by farmers.

The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a county housing authority or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income.

SOURCES: Codes, 1942, § 7332; Laws, 1942, ch. 233, § 13.

Cross References — Definition of farmers of low income, see § 43-33-123.

§ 43-33-123. "Farmers of low income" defined.

"Farmers of low income" as used in this article shall mean persons or families who (1) derive their principal income from operating or working upon a farm; (2) whose average net income is less than the amount which is necessary (as determined by the authority operating in that area) to enable them, without financial assistance, to obtain or provide themselves with decent, safe and sanitary housing.

SOURCES: Codes, 1942, § 7333; Laws, 1942, ch. 233, § 14; Laws, 1946, ch. 40, § 3.

§ 43-33-125. Consolidated housing authority.

If the governing body of each of two (2) or more municipalities (whether or not contiguous) by resolution declares that there is a need for one (1) housing authority to be created for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority (with such corporate name as it selects) shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation (as herein defined), including the power to undertake projects therein; and thereupon each housing authority (if any) created for each of such municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority. The creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations of this article as are applicable to the creation of a regional housing authority and that all of the provisions of this article applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof. The area of operation of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within five (5) miles of the boundaries of each such municipality, except that such area of operation may be changed to include or exclude any municipality or municipalities (with its aforesaid surrounding territory) in the same manner and under the same provisions as provided in this article for changing the area of operation of a regional housing authority by including or excluding a county or counties. For all such purposes the term "board of supervisors" shall be construed as meaning "governing body", except in Section 43-33-115 of this article where it shall be construed as meaning "mayor" or other executive head of the municipality, the term "county" shall be construed as meaning "municipality", and the terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively, unless a different meaning clearly appears from the context.

The governing body of a municipality for which a housing authority has not been created shall not adopt the above resolution unless it first declares that there is a need for a housing authority to function in said municipality, which declaration shall be made in the same manner and subject to the same conditions as the declaration of the governing body of a city required by Section 43-33-5 of the Housing Authorities Law for the purpose of authorizing a housing authority created for a city to transact business and exercise its powers.

Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities.

The term "municipality" as used in this article shall mean any city, town, village or other municipality in the state.

SOURCES: Codes, 1942, § 7334; Laws, 1942, ch. 233, § 15.

Cross References — Decreasing area of operation of regional housing authority, see § 43-33-109.

§ 43-33-127. Housing authority operations in other municipalities.

In addition to its other powers, a housing authority created for a city may exercise any or all of its powers within the territorial boundaries of any other municipality not included in the area of operation of such housing authority, for the purpose of planning, undertaking, financing, constructing and operating a housing project or projects within such municipality, provided that a resolution shall have been adopted (a) by the governing body of such municipality in which the authority is to exercise its powers and (b) by the housing authority of such municipality (if one has been theretofore established by such municipality and authorized to exercise its powers therein) declaring that there is a need for the housing authority of the aforesaid city to exercise its powers within such municipality. A municipality shall have the same powers to furnish financial and other assistance to a housing authority exercising its powers within such municipality under this section as though the municipality were within the area of operation of such authority.

SOURCES: Codes, 1942, § 7335; Laws, 1942, ch. 233, § 16.

Cross References — Requirement that public hearing be held before governing body of city or other municipality adopts resolution as provided in this section, see § 43-33-129.

§ 43-33-129. Findings required for authority to operate in municipality.

No governing body of a city or other municipality shall adopt a resolution as provided in Sections 43-33-105 or 43-33-127 declaring that there is a need for a housing authority (other than a housing authority established by such municipality) to exercise its powers within such municipality, unless a public hearing has first been held by such governing body and unless such governing body shall have found in substantially the following terms: (a) that unsanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford; and (b) that these conditions can be best remedied through the exercise of the aforesaid housing authority's powers within the territorial boundaries of such municipality. Such findings shall not have the effect of establishing a housing authority for any such municipality under the Housing Authorities Law nor of thereafter preventing such municipality from establishing a housing authority or joining in the creation of a consolidated housing authority or the increase of the area of operation of a consolidated housing authority. The clerk of the city or other municipality shall give notice of the time, place and purpose of the public hearing at least ten (10) days prior to the date on which the hearing is to be held, in a newspaper published in such municipality, or if there is no newspaper published in such municipality, then in a newspaper published in the state and having a general circulation in such municipality. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of such municipality and to all other interested persons.

During the time that, pursuant to these findings, a housing authority has outstanding (or is under contract to issue) any evidences of indebtedness for a project within the city or other municipality, no other housing authority may undertake a project within such municipality without the consent of said housing authority which has such outstanding indebtedness or obligation.

SOURCES: Codes, 1942, § 7336; Laws, 1942, ch. 233, § 17.

§ 43-33-131. Meetings and residence of commissioners.

Nothing contained in this article or the Housing Authorities Law shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project, nor to prevent the appointment of any person as a commissioner of the authority who resides within such boundaries or such additional area, and who is otherwise eligible for such appointment under this article or the Housing Authorities Law.

SOURCES: Codes, 1942, § 7337; Laws, 1942, ch. 233, § 18.

§ 43-33-133. Agreement to sell as security for obligations to federal government.

In any contract or amendatory or superseding contract for a loan and annual contributions heretofore or hereafter entered into between a housing authority (as defined in the Housing Authorities Law) and the federal government, or any agency thereof, with respect to any housing project undertaken by said housing authority, any such housing authority is authorized to make such covenants (including covenants with holders of obligations of said authority issued for purposes of the project involved), and to confer upon the federal government, or any agency thereof, such rights and remedies, as said housing authority deems necessary to assure the fulfillment of the purposes for which the project was undertaken. In any such contract, the housing authority may, notwithstanding any other provisions of law, agree to sell and convey the project (including all lands appertaining thereto) to which such contract relates to the federal government, or any agency thereof, upon the occurrence of such conditions, or upon such defaults on obligations for which any of the annual contributions provided in said contract are pledged, as may be prescribed in such contract, and at a price (which may include the assumption by the federal government, or any agency thereof, of the payment, when due, of the principal of and interest on outstanding obligations of the housing authority issued for purposes of the project involved) determined as prescribed therein and upon such other terms and conditions as are therein provided. Any such housing authority is hereby authorized to enter into such supplementary contracts, and to execute such conveyances, as may be necessary to carry out the provisions hereof. Notwithstanding any other provisions of law, any contracts or supplementary contracts or conveyances made or executed pursuant to the provisions of this section shall not be or constitute a mortgage within the meaning or for the purposes of any of the laws of this state.

SOURCES: Codes, 1942, § 7338; Laws, 1942, ch. 233, § 19.

§ 43-33-135. Supplemental nature of article.

The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law.

SOURCES: Codes, 1942, § 7340; Laws, 1942, ch. 233, § 21; Laws, 1946, ch. 403, § 8.

§ 43-33-137. Article controlling.

In so far as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

SOURCES: Codes, 1942, § 7341; Laws, 1942, ch. 233, § 22; Laws, 1946, ch. 403, § 10.

ARTICLE 5.

HOME LOAN BONDS.

SEC.

43-33-201.	Trustees, etc., may accept bonds.
43-33-203.	Counties, etc., may accept Home Owners' Loan Corporation.

§ 43-33-201. Trustees, etc., may accept bonds.

All trustees, executors, administrators, guardians, committees, receivers and other persons and corporations holding trust funds; and all corporations and private banks organized under or subject to the provisions of the laws of this state respecting banking in any form, and all building and loan associations organized or doing business under the laws of this state, conservator, liquidator, or rehabilitator of any such corporation, building and loan association or private banks organized under and subject to the provisions of the laws of this state respecting banking in any form; and persons, partnerships or corporations organized under or subject to the provision of the laws of this state respecting insurance; and the conservator, liquidator or rehabilitator of any such person, partnership or corporation organized under or subject to the provisions of any laws of this state respecting insurance; and other domestic corporations, and any other corporation that shall have made or shall hold an investment, whether with or without specified ratio, of real property security in a bond or notes or other evidence of indebtedness secured by mortgage or deed of trust on real property, or shares or part thereof, whether guaranteed or not, may, at any time, exchange, prior or subsequent to maturity, such bonds, notes or other evidences of indebtedness and the mortgage or deed of trust, or any share or part thereof, and any rights in respect thereto for the bonds of the Home Owners' Loan Corporation or the bonds of any Federal Home Loan Bank, at par and may hold such bonds as authorized and lawful investments for any and all persons notwithstanding the provisions of any general or special law of this state inconsistent with the provisions of this section, subject to the sole limitation that in all cases where any of the foregoing are for any reason acting or being operated or liquidated under the orders of any chancery court of this state, that an order approving such exchange or investment be first obtained from the chancery court having jurisdiction.

SOURCES: Codes, 1942, § 7343; Laws, 1934, ch. 213.

Cross References — Investment in insured housing authority obligations, see § 43-33-303.

Investment of trust funds by trustees, guardians and other fiduciaries, see §§ 91-13-1 et seq.

§ 43-33-203. Counties, etc., may accept Home Owners' Loan Corporation.

The board of supervisors of any county, the mayor and board of aldermen, the mayor and city council, or other governing authorities, of any municipality of the state, and guardians, trustees, and receivers in chancery are authorized and empowered to accept in full and final settlement of any indebtedness due such county or municipality (except taxes and moneys due by virtue of special assessments), guardian, trustee, or receiver, and equivalent amount of bonds of the Home Owners' Loan Corporation, at par value, in exchange for such indebtedness. In the case of guardians, trustees and receivers in chancery such exchange or acceptance of such bonds shall first be approved by the chancery court having jurisdiction over such guardian, trustee or receiver.

SOURCES: Codes, 1942, § 7344; Laws, 1934, ch. 216.

Cross References — Insured housing obligations as securities for public funds, see § 43-33-305.

ARTICLE 7.

INSURED LOANS.

SEC.	
43-33-301.	Loans authorized.
43-33-303.	Investments authorized.
43-33-305.	Securities for public funds.
43-33-307.	Article cumulative.

§ 43-33-301. Loans authorized.

(a) Banks, savings banks, trust companies, savings and loan associations and credit unions which are subject to the laws of the State of Mississippi or of the United States of America, and mortgagees approved by the Federal Housing Administration, Veterans Administration, or Farmers Home Administration which are qualified by requirements of the United States or a political subdivision thereof to so act, are hereby authorized to make loans and advances of credit and purchases of obligations representing loans and advances of credit which are insured, guaranteed in whole or in part, or eligible for purchase in whole or in part by the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, and any successors thereof to obtain such insurance or guarantee or to sell and transfer to such agencies such loans, advances of credit, and obligations.

(b) Banks, savings banks, trust companies, insurance companies, savings and loan associations, credit unions, pension funds, and mortgagees approved by the Federal Housing Administration, Veterans Administration, or Farmers Home Administration which are subject to the laws of the State of Mississippi or of the United States of America and have met the requirements thereof, are hereby authorized to make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are enumerated in subsection (a) of this section, which are secured by a mortgage or deed of trust on real estate or a leasehold interest.

SOURCES: Codes, 1942, § 7291; Laws, 1936, chs. 171, 172, § 1; Laws, 1938, ch. 358, § 1; Laws, 1969, Ex Sess, ch. 34, § 1; Laws, 1973, ch. 503, § 1, eff from and after passage (approved April 17, 1973).

Cross References — Veterans' loans insured by federal government, see § 35-3-19.
Powers of banks with respect to trusts and trust funds, see § 81-5-33.
Investments and loans by savings and loan associations, see § 81-12-159.
Investments by credit unions, see § 81-13-11.
Legal investments for insurance companies, see § 83-19-51.

§ 43-33-303. Investments authorized.

Any bank, savings bank, trust company, insurance company, savings and loan association, credit union, pension fund, any trustee or other fiduciary or mortgagee approved by the Federal Housing Administration, Veterans Administration, or Farmers Home Administration, are hereby authorized to invest their funds and money in their custody or possession eligible for investments in notes or bonds secured by mortgage or deed of trust on real estate or a leasehold interest insured or guaranteed in whole or in part or eligible for purchase in whole or in part by the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation and any successors thereof to also invest such funds in debentures or other evidences of indebtedness issued by the agencies last enumerated. However, this section shall not authorize fiduciaries to make such investments without the consent of any court where such consent is now required by law.

SOURCES: Codes, 1942, § 7292; Laws, 1936, chs. 171, 172, § 2; Laws, 1938, ch. 358, § 2; Laws, 1969, Ex Sess, ch. 34, § 2; Laws, 1973, ch. 503, § 2, eff from and after passage (approved April 17, 1973).

Cross References — Housing bonds as legal investments, see § 43-33-39.
Home loan bonds as legal investments, see §§ 43-33-201, 43-33-203.
Powers of banks with respect to trusts and trust funds, see § 81-5-33.
Investments and loans by savings and loan associations, see § 81-12-159.
Investments by credit unions, see § 81-13-11.
Legal investments for insurance companies, see § 83-19-51.
Investment of trust funds by trustees, guardians and other fiduciaries, see §§ 91-13-1 et seq.
Guardian's investment of surplus money of ward, see § 93-13-57.

§ 43-33-305. Securities for public funds.

Such notes, bonds, debentures, including obligations of the Federal National Mortgage Association and the Government National Mortgage Association or their successors, are hereby made eligible to be used as security for public funds in any depository selected and qualifying as a depository for public funds, and may be used as security or for deposit where any kind of bonds or other securities are required or may by law be deposited or accepted as security, including the deposit with the state treasurer by insurance companies for the security and benefit of policyholders. However, notes and other securities as are insured by the Federal Housing Administrator under Title I of the National Housing Act, as amended, are excepted from this provision.

SOURCES: Codes, 1942, § 7293; Laws, 1936, chs. 171, 172, § 3; Laws, 1938, ch. 358, § 3; Laws, 1969, Ex Sess, ch. 34, § 3, eff from and after passage (approved October 7, 1969).

Cross References — Securities which may be deposited by depositories, see §§ 27-105-5, 27-105-315.

Housing bonds as legal investments, see § 43-33-39.

Investment in home loan bonds by fiduciaries, see § 43-33-201.

Acceptance of home loan bonds in payment of debts owing to counties, municipalities and fiduciaries, see § 43-33-203.

Legal investments for insurance companies, see § 83-19-51.

Federal Aspects — Title I of the National Housing Act, see 12 USCS § 1702 et seq.

§ 43-33-307. Article cumulative.

This article is to be construed as power additional and not in derogation of existing laws. Therefore, no law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments, or limiting investments of capital or deposits, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to Sections 43-33-301 through 43-33-305.

SOURCES: Codes, 1942, § 7294; Laws, 1936, chs. 171, 172, § 4; Laws, 1938, ch. 358, § 4.

ARTICLE 9.

MISSISSIPPI HOUSING FINANCE CORPORATION
[REPEALED].

§§ 43-33-501 through 43-33-505. Repealed.

Repealed by Laws, 1989, ch. 525, § 35, eff from and after September 1, 1989.

§ 43-33-501. [Laws, 1980, ch. 484, § 1]

§ 43-33-503. [Laws, 1980, ch. 484, § 2; Laws, 1981, ch. 476, § 1; Laws, 1984, ch. 517, § 1; Laws, 1986, ch. 439, § 1]

§ 43-33-505. [Laws, 1980, ch. 484, § 3; Laws, 1981, ch. 476, § 2; Laws, 1982, ch. 399, § 1; Laws, 1984, ch. 517, § 2; Laws, 1985, ch. 468, § 2; Laws, 1986, ch. 439, § 2]

Editor's Note — Former § 43-33-501 specified the title of former Article 9. For provisions similar to former Article 9, see Article 11, §§ 43-33-701 et seq.

Former § 43-33-503 specified the legislative findings and declaration of purpose of the legislation.

Former § 43-33-505 was entitled: Definitions.

§ 43-33-507. Repealed.

Repealed by Laws, 1991, ch. 528, § 7, eff from and after July 1, 1991.

[Laws, 1980, ch. 484, § 4(1); Laws, 1981, ch. 476, § 3; Laws, 1984, ch. 517, § 3; Laws, 1989, ch. 525, § 3; Laws, 1990, ch. 335, § 1]

Editor's Note — Former § 43-33-507 created the Mississippi Housing Finance Corporation.

§§ 43-33-509 through 43-33-523. Repealed.

Repealed by Laws, 1989, ch. 525, § 35, eff from and after September 1, 1989.

§ 43-33-509. [Laws, 1980, ch 484, § 4(2)]

§ 43-33-511. [Laws, 1980, ch. 484, § 4(3)]

§ 43-33-513. [Laws, 1980, ch. 484, § 4(4)]

§ 43-33-515. [Laws, 1980, ch. 484, § 4(5); Laws, 1981, ch. 476, § 4; Laws, 1984, ch. 517, § 4]

§ 43-33-517. [Laws, 1980, ch. 484, § 5; Laws, 1981, ch. 476, § 5; Laws, 1982, ch. 399 § 2; Laws, 1984, ch. 517, § 5; Laws, 1986, ch. 439, § 3]

§ 43-33-519. [Laws, 1980, ch. 484, § 6; Laws, 1981, ch. 476, § 6; Laws, 1984, ch. 517, § 6]

§ 43-33-521. [Laws, 1980, ch. 484, § 7; Laws, 1981, ch. 476, § 7; Laws, 1982, ch. 399, § 3; Laws, 1984, ch. 517, § 7; Laws, 1986, ch. 439, § 4]

§ 43-33-522. [Laws, 1986, ch. 439, § 5]

§ 43-33-523. [Laws, 1980, ch. 484, § 8(1); Laws, 1981, ch. 476, § 8; Laws, 1984, ch. 517, § 8]

Editor's Note — Former § 43-33-509 required members, officers, employees and agents of the Housing Finance Corporation to post bond.

Former § 43-33-511 provided for an executive director and secretary for the corporation.

Former § 43-33-513 called for the corporation to hold regular meetings and specified quorum requirements.

Former § 43-33-515 specified that the corporation was to be not-for-profit, and provided for the compensation of the expenses of members.

Former § 43-33-517 specified the powers of corporation.

Former § 43-33-519 authorized loans to mortgage lenders and specified the required collateral, terms and conditions of such loans.

Former § 43-33-521 authorized the purchase of mortgage loans by corporation, and specified the terms and conditions.

Former section 43-33-522 specified the powers of the corporation with respect to rental development mortgage loans, mortgage loans for acquisition or construction of condominiums or cooperatives, and energy conservation loans.

Former § 43-33-523 created an oversight committee.

§ 43-33-525. Repealed.

Repealed by Laws, 1984, ch. 517, § 18, eff from and after May 21, 1984. [Laws, 1980, ch. 484, § 8(2)]

Editor's Note — Former § 43-33-525 required committee approval of corporation budget.

§§ 43-33-527 through 43-33-583. Repealed.

Repealed by Laws, 1989, ch. 525, § 35, eff from and after September 1, 1989.

§ 43-33-527. [Laws, 1980, ch. 484, § 8(3); Laws, 1981, ch. 476, § 9; Am, Laws, 1984, ch. 517, § 9]

§ 43-33-529. [Laws, 1980, ch. 484, § 8(4)]

§ 43-33-531. [Laws, 1980, ch. 484, § 8(5); Laws, 1981, ch. 476, § 10]

§ 43-33-533. [Laws, 1980, ch. 484, § 9; Am, Laws, 1989, ch. 464, § 2]

§ 43-33-535. [Laws, 1980, ch. 484, § 10]

§ 43-33-537. [Laws, 1980, ch. 484, § 11(1); Laws, 1981, ch. 476, § 11; Laws, 1982, ch. 399, § 4; Laws, 1983, ch. 538; Laws, 1984, ch. 517, § 10; Laws, 1984, 1st Ex Sess, ch. 23; Laws, 1985, ch. 468, § 1; Laws, 1989, ch. 464, § 1]

§ 43-33-539. [Laws, 1980, ch. 484, § 11(2)]

§ 43-33-541. [Laws, 1980, ch. 484, § 11(3); Laws, 1981, ch. 476, § 12; Laws, 1984, ch. 517, § 11; Laws, 1986, ch. 439, § 6]

§ 43-33-543. [Laws, 1980, ch. 484, § 12(1); Laws, 1981, ch. 476, § 13; Laws, 1984, ch. 517, § 12]

§ 43-33-545. [Laws, 1980, ch. 484, § 12(2)]

§ 43-33-547. [Laws, 1980, ch. 484, § 12(3); Laws, 1981, ch. 476, § 14; Laws, 1984, ch. 517, § 13]

§ 43-33-549. [Laws, 1980, ch. 484, § 12(4); Laws, 1981, ch. 476, § 15; Laws, 1984, ch. 517, § 14]

§ 43-33-551. [Laws, 1980, ch. 484, § 12(5)]

§ 43-33-553. [Laws, 1980, ch. 484, § 12(6); Laws, 1981, ch. 476, § 16]

§ 43-33-555. [Laws, 1980, ch. 484, § 13; Laws, 1981, ch. 476, § 17; Laws, 1984, ch. 517, § 15]

§ 43-33-557. [Laws, 1980, ch. 484, § 14; Laws, 1986, ch. 439, § 7]

§ 43-33-559. [Laws, 1980, ch. 484, § 15]

§ 43-33-561. [Laws, 1980, ch. 484, § 16]

§ 43-33-563. [Laws, 1980, ch. 484, § 17]

§ 43-33-565. [Laws, 1980, ch. 484, § 18]

§ 43-33-567. [Laws, 1980, ch. 484, § 19; Laws, 1981, ch. 476, § 18; Laws, 1984, ch. 517, § 16; Laws, 1986, ch. 439, § 8]

§ 43-33-569. [Laws, 1980, ch. 484, § 20; Laws, 1986, ch. 439, § 9]

§ 43-33-571. [Laws, 1980, ch. 484, § 21; Laws, 1981, ch. 476, § 19]

§ 43-33-573. [Laws, 1980, ch. 484, § 22; Laws, 1981, ch. 476, § 20; Laws, 1984, ch. 517, § 17]

§ 43-33-575. [Laws, 1980, ch. 484, § 23]

§ 43-33-577. [Laws, 1980, ch. 484, § 24]

§ 43-33-579. [Laws, 1980, ch. 484, § 25]

§ 43-33-581. [Laws, 1980, ch. 484, § 26]

§ 43-33-583. [Laws, 1980, ch. 484, § 27; Laws, 1986, ch. 439, § 10]

Editor's Note — Former § 43-33-527 authorized the corporation and the committee to promulgate rules, regulations, resolutions and bylaws.

Former § 43-33-529 required particular regulations as to making loans and purchasing mortgages to contain certain provisions.

Former § 43-33-531 authorized certain additional rules and regulations.

Former § 43-33-533 specified conditions precedent to making loans or purchasing mortgages.

Former § 43-33-535 provided that housing financed by corporation was subject to existing land use regulations.

Former § 43-33-537 pertained to the issuance of bonds by corporation, and specified certain limitations as to time and amount of such bonds.

Former § 43-33-539 required that a certain portion of bond proceeds be made available to the veterans' farm and home board.

Former § 43-33-541 required that any bond issuance be pursuant to a plan for equitable mortgage loan distribution.

Former § 43-33-543 required that bonds and notes be general obligations of the corporation.

Former § 43-33-545 required that bonds and notes be authorized by resolution.

Former § 43-33-547 specified the form of bonds and notes.

Former § 43-33-549 authorized the issuance of bonds and notes for the purpose of refunding other bonds or notes.

Former § 43-33-551 pertained to the pledge of earnings of the corporation.

Former § 43-33-553 provided that members were not personally liable on bonds and notes.

Former § 43-33-555 pertained to reserve funds.

Former § 43-33-557 provided that no consent of governmental bodies was required to issue bonds.

Former § 43-33-559 provided that state and municipalities were not liable on bonds or notes of corporation.

Former § 43-33-561 provided that the rights and remedies of corporation and bondholders were not to be limited, and specified the jurisdiction and venue of suits by bondholders.

Former § 43-33-563 specified the persons and entities authorized to invest in corporation bonds.

Former § 43-33-565 specified that the bonds were exempt from "Mississippi Securities Act".

Former § 43-33-567 provided tax exemptions for the corporation and for bonds and bond income.

Former § 43-33-569 pertained to the custody and deposit of the corporation's funds, audit of the corporation, the accounting system, and the corporation's annual report.

Former § 43-33-571 provided that members and agents of corporations were not personally liable for actions within the scope of their authority.

Former § 43-33-573 directed state officers and agencies to cooperate with the corporation and the committee.

Former § 43-33-575 provided court calendar preference for certain matters involving the corporation, and specified the venue.

Former § 43-33-577 provided for the continuation of the corporation's existence, and specified the effect of termination.

Former § 43-33-579 required members, officers, and employees to disclose any interests in certain matters, and required suspension of participation where interests existed.

Former § 43-33-581 provided that the provisions of the article were supplemental, and provided that compliance with other provisions as to issuance of bonds and notes was unnecessary.

Former § 43-33-583 provided that the provisions of the article were to be construed liberally, and provided for the severability of the provisions of the article.

ARTICLE 11.

MISSISSIPPI HOME CORPORATION ACT.

SEC.	
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43-33-795. Progress report; annual fiscal reports.
43-33-797. Sections 43-33-767 through 43-33-797 give complete authority; effect on other laws.

§ 43-33-701. Short title.

This article shall be known and may be cited as the "Mississippi Home Corporation Act."

SOURCES: Laws, 1989, ch. 525, § 1, eff from and after July 1, 1989.

Federal Aspects — National Affordable Housing Act, see §§ 42 USCS 12701 et seq.

§ 43-33-702. Legislative findings.

The Legislature hereby finds and declares:

(a) That there exists in the State of Mississippi a severe shortage of adequate, safe and sanitary residential and rental housing available at prices or rentals within the financial means of persons of low or moderate income; that this shortage has contributed to and will contribute to the creation and persistence of substandard living conditions and is damaging to the health, welfare and prosperity of the residents of this state.

(b) That private enterprise and investment have been unable, without assistance, to produce the needed construction or rehabilitation of adequate, safe and sanitary housing at prices or rentals which persons of low or moderate income can afford and to provide sufficient long-term mortgage financing for residential or rental housing for occupancy by such persons;

(c) That the shortage of adequate and affordable housing can best be addressed through a strong, unified organization which can develop creative approaches to housing production and assistance through active cooperation of public and private entities, including federal, state and local government, private nonprofit and for profit entities, community and citizens groups, charitable organizations, and private citizens; that this organization should stimulate private development, construction and rehabilitation, develop a wide range of state housing assistance programs, engage in comprehensive planning, study, research and statewide coordination with respect to low and moderate housing, provide technical, educational and consultative services, and promote governmental and community interest in the provision of housing for low and moderate income persons in the state; that this organization should receive appropriations of public funds, should be authorized to obtain funding for its programs by issuing its bonds and notes; and that this organization should be authorized to administer available federal, state or local programs and monies and to retain for its corporate purposes all such fees and income generated thereby;

(d) To aid in remedying these conditions and to accomplish these public purposes, effective September 1, 1989, there is created a public body corporate and politic, separate and apart from the state, constituting a governmental instrumentality, to be known as the Mississippi Home Corporation, for the performance of essential public functions. The corporation shall be constituted and shall have such powers as provided in this article.

SOURCES: Laws, 1991, ch. 528, § 1, eff from and after July 1, 1991.

Cross References — Creation and powers of corporation, see § 43-33-711.

§ 43-33-703. Definitions.

For the purposes of this article, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Bonds" or "notes" means the bonds or notes, respectively, issued by the corporation pursuant to this article;

(b) "Corporation" means the Mississippi Home Corporation;

(c) "Energy conservation loan" means a mortgage loan made to a person of low or moderate income to finance improvements made or to be made to the residential housing owned and occupied by such person for the purposes of conserving energy and reducing the energy costs attributable to such residential housing, and containing such terms and conditions as the corporation may require;

(d) "Housing development mortgage loan" means a mortgage loan made to finance or refinance the acquisition, construction or substantial rehabilitation of a housing development, including both construction loans and permanent loans;

(e) "Housing development" means any specific work located within the state and made available to persons of low or moderate income for rental or residential housing purposes, including any building, land, equipment, facility or other real or personal property which may be necessary, convenient or desirable in connection therewith including streets, sewers, water and utility services;

(f) "Mortgage" means a mortgage, mortgage deed or deed of trust on a fee interest in residential housing or a rental housing development or, on real property in which the fee interest is owned without limitation by a unit of government or other entity created by statute, a leasehold on such a fee interest of a duration satisfactory to the corporation, which shall in all events exceed the term of the security interest created by the mortgagee;

(g) "Mortgage lender" means any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, building and loan association, and any other lending institution; provided that such lender is domiciled or qualified to do business in this state;

(h) "Mortgage loan" means a financial obligation secured by a mortgage, including any portion thereof or participation therein in any new or existing mortgage loan;

(i) "Municipality" means any county, city, town or village of the state;

(j) "Persons of low or moderate income" means persons or families, irrespective of race, color, national origin, sex, religion, age or handicap, within the state, who are determined by the corporation to require such assistance as is made available pursuant to this article on account of insufficient personal or family income to reasonably afford decent, safe and sanitary residential or rental housing, taking into consideration, without limitation, such factors as the following: (i) the amount of the total income of such persons and families available for housing needs; (ii) the size of the family; (iii) the cost and condition of residential or rental housing facilities in their locality or in an area reasonably accessible to such locality; (iv) the ability of such persons and families to compete successfully in the normal, private residential or rental housing market and to pay the amounts for which private enterprise is providing sanitary, decent and safe residential or rental housing in their locality or in an area reasonably accessible to such locality; (v) the standards established by various programs of the federal government for determining eligibility based on income of such persons and families and, in the case of projects with respect to which income limits have been established by any agency of the federal government having jurisdiction thereover for the purpose of defining eligibility of low and moderate income families, the corporation may determine that the limits so established shall govern; in all other cases income limits for the purpose of defining low or moderate income persons shall be established by the corporation in its rules and regulations;

(k) "Qualified sponsors" means any person, corporation, partnership or association, profit or nonprofit, public or private, which provides or develops residential or rental housing for low and moderate income families;

(*l*) "Residential housing" means a specific work or improvement undertaken to provide an owner-occupied residence within the state, which shall become the principal residence of the owner within a reasonable time after the financing is provided;

(m) "State" means the State of Mississippi;

(n) "State agency" means any board, authority, agency, department, commission, public corporation, body politic or instrumentality of the state;

(o) "Local housing authority" or "regional housing authority" means a public body corporate and politic organized and operating pursuant to Title 43, Chapter 33, Mississippi Code of 1972, as amended, or a nonprofit corporation organized under the laws of the State of Mississippi and designated by the United States Department of Housing and Urban Development as a public housing agency within the meaning of Section 3(6) of the United States Housing Act of 1937, as amended.

SOURCES: Laws, 1989, ch. 525, § 2; Laws, 1991, ch. 528, § 2, eff from and after July 1, 1991.

Cross References — Adoption of rules, regulations, resolutions, and bylaws by corporation, see § 43-33-721.

Federal Aspects — Section 3 of United States Housing Act of 1937, see 42 USCS § 1437a.

§ 43-33-704. Mississippi Home Corporation created; vesting in corporation of functions, property, rights and powers of Mississippi Housing Finance Corporation; continuation of regulations; powers generally; qualifications, appointment and terms of members; vacancies; removal; officers; ex officio members; declaration of public purpose and legislative intent.

(1) There is created by this article the Mississippi Home Corporation, which shall be a continuation of the corporate existence of the Mississippi Housing Finance Corporation and (a) all property, rights and powers of the Mississippi Housing Finance Corporation are vested in, and shall be exercised by, the corporation, subject, however, to all pledges, covenants, agreements, undertakings and trusts made or created by the Mississippi Housing Finance Corporation; (b) all references to the Mississippi Housing Finance Corporation in any other law or regulation shall be deemed to refer to and apply to the corporation; and (c) all regulations of the Mississippi Housing Finance Corporation shall continue to be in effect as the regulations of the corporation until amended, supplemented or rescinded by the corporation in accordance with law.

(2) The corporation is created with power to: raise funds from private investors in order to make such private funds available to finance the acquisition, construction, rehabilitation and improvement of residential and rental housing for persons of low or moderate income within the state; provide financing to qualified sponsors or individuals for a wide range of loans including, but not limited to, housing development, mortgage, rehabilitation or

energy conservation loans; make loans to private lenders to finance any of these loans; purchase any of these loans from private lenders; refinance, insure or guarantee any of these loans; provide for temporary or partial financing for any of these purposes; develop, operate and administer housing programs which further its stated goals of improving the availability, affordability and quality of low and moderate income housing in the state; and make grants or loans to private nonprofit developers, local governments or private persons in furtherance of these goals;

(3)(a) The corporation shall be composed of thirteen (13) members. The Governor, with the advice and consent of the Senate, shall appoint the members of the corporation, who shall be residents of the state and shall not hold other public office. There shall be at least one (1) member and not more than three (3) members appointed from each of the five (5) congressional districts in existence on January 1, 1989, and, in addition, from and after September 1, 1980, (i) at least one (1) member shall have at least three (3) years' experience and background in the savings and loan association business, the commercial banking business or the mortgage banking business, (ii) at least one (1) member shall have at least three (3) years' experience and background in the residential housing construction industry, (iii) at least one (1) member shall have at least three (3) years' experience and background in the licensed residential housing brokerage business, and (iv) at least one (1) member shall be a member of the general public not engaged in any business, industry or activity described in clauses (i) through (iii) of this subparagraph; from and after September 1, 1989, (i) at least one (1) member shall have at least three (3) years' experience and background in the manufactured housing business; (ii) at least one (1) member shall have at least three (3) years' experience and background in nonprofit housing development in a Metropolitan Statistical Area (MSA); (iii) at least one (1) member shall have at least three (3) years' experience and background in nonprofit housing development outside a MSA; and (iv) at least (1) member shall be a low or moderate income person qualified for assistance under this article.

(b) The term of office of the members of the corporation who are serving pursuant to this subsection (3) shall terminate on May 23, 2000.

(4) From and after May 23, 2000, the corporation shall be composed of nine (9) members. The Governor, with the advice and consent of the Senate, shall appoint six (6) members of the corporation, who shall be residents of the state. The Governor shall appoint two (2) members from each Supreme Court District. The Lieutenant Governor shall appoint three (3) members of the corporation, who shall be residents of the state. The Lieutenant Governor shall appoint one (1) member from each Supreme Court District. Two (2) members shall be appointed by the Governor for an initial term of two (2) years, two (2) members shall be appointed by the Governor for an initial term of four (4) years, and two (2) members shall be appointed by the Governor for an initial term of six (6) years. One (1) member shall be appointed by the Lieutenant Governor for an initial term of two (2) years, one (1) member shall be appointed

by the Lieutenant Governor for an initial term of four (4) years, and one (1) member shall be appointed by the Lieutenant Governor for an initial term of six (6) years. Thereafter, the terms of members appointed by the Governor and Lieutenant Governor shall be as provided in subsection (5) of this section. In the appointment process, the Governor and Lieutenant Governor will attempt to see that all portions of society and its diversity are represented in the membership of the corporation. In the appointment process, the Governor and Lieutenant Governor will attempt to see that persons with substantial housing and financial experience are represented in the membership of the corporation.

(5) Except as otherwise provided in subsection (3)(b) and subsection (4) of this section, appointments shall be for terms of six (6) years. Each member shall hold office until his successor has been appointed and qualified. Vacancies shall be filled by appointment by the appropriate appointing authority, subject to the advice and consent of the Senate, for the length of the unexpired term only. Any member of the corporation shall be eligible for reappointment. Any member of the corporation may be removed by the appointing authority for misfeasance, malfeasance or willful neglect of duty after reasonable notice and a public hearing, unless the same are expressly waived in writing. Each member of the corporation shall before entering upon his duty take an oath of office to administer the duties of his office faithfully and impartially, and a record of such oath shall be filed in the office of the Secretary of State. The corporation shall annually elect from its membership a chairman who shall be eligible for reelection. The corporation shall annually elect from its membership a vice chairman who shall be eligible for reelection. The corporation shall also elect or appoint, and prescribe the duties of, such other officers (who need not be members) as the corporation deems necessary or advisable, and the corporation shall fix the compensation of such officers. The corporation may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper, not inconsistent with this article or other provisions of law.

(6) In accomplishing its purposes, the corporation is acting in all respects for the benefit of the people of the state and the performance of essential public functions and is serving a vital public purpose in approving and otherwise promoting their health, welfare and prosperity, and the enactment of the provisions hereinafter set forth is for a valid public purpose and is hereby so declared to be such as a matter of express legislative determination.

SOURCES: Laws, 1991, ch. 528, § 3; Laws, 2000, ch. 627, § 1, eff from and after passage (approved May 23, 2000.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3)(a). The letter "(a)" was deleted before the word "from." The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 43-33-705. Fiduciary bond; premiums.

All directors, officers, employees or agents exercising any voting power or discretionary authority shall be required prior to the issuance of any bonds by the corporation to have issued by a surety company licensed to do business in the State of Mississippi a fiduciary bond in the amount of Fifty Thousand Dollars ($50,000.00) for the faithful performance of their duties. The corporation shall pay the premiums on such bonds.

SOURCES: Laws, 1989, ch. 525, § 4, eff from and after July 1, 1989.

§ 43-33-707. Appointment of officers; executive director; secretary; treasurer; employment of counsel.

(1) The corporation shall appoint, and prescribe the duties of, such officers (who need not be directors) as the corporation deems necessary or advisable, including an executive director and a secretary (who may be the same person), and the corporation shall fix the compensation of such officers. The executive director shall be appointed with the advice and consent of the Senate and shall serve at the will and pleasure of the board. The executive director shall administer, manage and direct the affairs and business of the corporation, subject to the policies, control and direction of the directors of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that the copies are true copies, and all persons dealing with the corporation may rely upon the certificates. The treasurer shall be the custodian of the assets of the corporation, except for those assets required by contracts with bondholders to be in the custody of the trustee. The directors of the corporation shall set the investment policy for assets, and the executive director shall be responsible for making investments in accordance with such policy. The treasurer may delegate all or a portion of his duties and responsibilities to the executive director.

(2) The corporation shall have the authority, in its discretion, to employ counsel on an annual basis at an annual salary at an amount it deems proper. Such counsel may, in addition to an annual salary, be paid additional compensation when employed by the corporation in the matter of litigation and the issuance of bonds and the drafting of orders and resolutions in connection therewith.

SOURCES: Laws, 1989, ch. 525, § 5; Laws, 2000, ch. 627, § 5, eff from and after passage (approved May 23, 2000.)

§ 43-33-709. Meetings of corporation; notice; quorum.

(1) The corporation shall hold regular meetings as set forth in its bylaws. Special meetings of the corporation shall be held at the call of the chairperson or whenever any three (3) members shall so request in writing. Each director shall be given not less than three (3) days' written notice of special meetings, unless at least seven (7) directors have agreed to the scheduling of the special meeting. Notice of special meetings may be oral or written. Written notice shall be effected by first class mail or by any more rapid means. Written notice is effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in U.S. mail.

(2) A majority of members then in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the corporation. No vacancy in the membership of the corporation shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the corporation. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors.

(3) Directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

SOURCES: Laws, 1989, ch. 525, § 6, eff from and after July 1, 1989.

Cross References — Applicability of this section to committees of the board of directors, see § 43-33-711.

§ 43-33-711. Creation of committees; members.

(1) The board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two (2) or more directors who serve at the pleasure of the board.

(2) The creation of a committee and appointment of directors to it must be approved by a majority of all directors in office when the action is taken.

(3) Sections of this article which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

SOURCES: Laws, 1989, ch. 525, § 7; Laws, 1991, ch. 528, § 4; Laws, 2000, ch. 627, § 4, eff from and after passage (approved May 23, 2000.)

Cross References — Powers of corporation generally, see § 43-33-704.

§ 43-33-713. Minutes of meetings; accounting records; other records.

(1) The corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the directors without a meeting, and a record of all actions taken by committees of the board of directors.

(2) The corporation shall maintain appropriate accounting records.

(3) The corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(4) The corporation shall keep a copy of the following records at its office:

(a) Its bylaws or restated bylaws and all amendments to them currently in effect;

(b) The minutes of all meetings of the board of directors and records of all actions approved by the directors for the past three (3) years;

(c) A list of the names and business or home addresses of its current directors and officers; and

(d) Its most recent status report delivered to the Secretary of State.

SOURCES: Laws, 1989, ch. 525, § 8, eff from and after July 1, 1989.

Cross References — Applicability of this section to committees of the board of directors, see § 43-33-711.

§ 43-33-715. Nonprofit nature of corporation; directors to serve without compensation; per diem allowance; payment of expenses.

The corporation is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the corporation shall inure to the benefit of or be distributable to its directors or officers or other private persons, except as otherwise provided in this article.

Directors of the corporation shall serve without compensation; provided that all members, except ex officio members, shall receive the per diem established in Section 25-3-69, Mississippi Code of 1972, for their attendance at meetings; and all directors shall be entitled to receive reimbursement for any actual and reasonable expenses incurred as a necessary incident to service on the corporation, including mileage, as provided in Section 25-3-41, Mississippi Code of 1972.

SOURCES: Laws, 1989, ch. 525, § 9, eff from and after July 1, 1989.

§ 43-33-717. Powers of corporation.

(1) The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including, but without limiting the generality of the foregoing, the power:

(a) To make and alter bylaws for its organization and internal management;

(b) To sue and be sued, have a seal and alter the same at pleasure, and maintain an office at such place or places in the state as it may determine;

(c) To appoint officers, agents and employees, prescribe their duties and qualifications, and fix their compensation;

(d) To acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease, condemnation or otherwise, including rights or easements; to hold, manage, operate or improve real or personal property; to sell, assign, exchange, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or deed of trust or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public sale;

(e) To make and execute agreements, contracts and other instruments necessary or convenient to the exercise of the powers and functions of the corporation under this article;

(f) To employ or contract with architects, engineers, attorneys, accountants, financial experts and other advisors as may be necessary in its judgment and to fix and pay their compensation;

(g) To make and execute contracts for the administration, servicing or collection of any mortgage loan and pay the reasonable value of services rendered to the corporation pursuant to such contracts;

(h) To contract for the employment of a financial advisor, underwriting attorneys, trustees, paying agents, depositories or any consultants retained in connection with the issuance of any bonds or notes including refunding bonds or notes or dealing with the disposition of any proceeds thereof;

(i) To issue negotiable bonds and notes and to provide for the rights of the holders thereof;

(j) Subject to any agreement with bondholders or noteholders, to sell any mortgage loans at public or private sale at the fair market value for such a mortgage; and

(k) Subject to any agreement with bondholders and noteholders, to make, alter or repeal such rules and regulations with respect to the operations, properties and facilities of the corporation as are necessary to carry out its functions and duties in the administration of this article.

(2) The corporation shall also have the power:

(a) To make loans to mortgage lenders for the purpose of:

(i) Making housing development mortgage loans to qualified sponsors for low and moderate income rental or residential housing;

(ii) Making loans to low and moderate income purchasers of residential housing with preference to those who are displaced from adequate housing as a result of a major disaster, whether it be a man-made, technological or natural disaster, upon a declaration by the Governor that a major disaster exists in the state;

(b) To purchase from mortgage lenders any of the loans enumerated in subparagraphs (i) and (ii);

(c) To insure, reinsure or guarantee any of the types of loans enumerated in subparagraphs (i) and (ii);

(d) To make, in such amounts and upon such terms and conditions as the corporation shall approve, temporary loans, preconstruction loans, interim financing loans to any qualified sponsor and permanent financing to any qualified sponsor of multifamily housing.

(3) The corporation shall also have the power to make loans from funds not otherwise encumbered by pledge or indenture to low and moderate income persons for the following purposes:

(a) Purchasing, improving or rehabilitating existing residential housing and occupied by the owners;

(b) Making loans to qualified nonprofit sponsors, to local housing authorities and to owners of residential housing for the development, construction, purchase, rehabilitation, weatherization or maintenance of residential housing.

(4) Using funds not otherwise encumbered by pledge or indenture, the corporation may:

(a) Establish a rental assistance program;

(b) Provide such advisory consultation, training and educational services as will assist in the planning, construction, rehabilitation and operation of housing, including but not limited to, assistance in community development and organization, home management and advisory services for residents, and in promotion of community organizations and local governments to assist in developing housing;

(c) Encourage research and demonstration projects to develop new and better methods for increasing the supply, types and financing of housing and to receive and accept contributions, grants or aid from any source, public or private, including but not limited to the United States and this state, for carrying out this purpose;

(d) Encourage and stimulate cooperatives and other forms of housing with tenant participation;

(e) Promote innovative programs for home ownership, including but not limited to lease-purchase programs, employer-sponsored housing programs, tenant cooperatives and nonprofit associations;

(f) Design and support programs to address special needs groups including, but not limited to, handicapped, disabled, elderly, homeless, HIV/AIDS carriers and families with children;

(g) Develop a comprehensive plan for, and engage in a yearly planning process for, addressing the housing needs of low and moderate income persons in Mississippi.

(5) The corporation also has the power:

(a) To procure, or require the procurement of, insurance against any loss in connection with its operations, including without limitation the repayment of any mortgage loan or loans, in such amounts and from such insurers, including the federal government, as it may deem necessary or desirable, and to pay any premiums therefor;

(b) Subject to any agreement with bondholders or noteholders: (i) to renegotiate any loan in default; (ii) to waive any default or consent to the modification of the terms of any loan or agreement; (iii) to commence, prosecute and enforce a judgment in any action or proceeding, including without limitation a foreclosure proceeding, to protect or enforce any right conferred upon it by law, mortgage loan agreement, contract or other agreement; (iv) and in connection with any such proceeding, to bid for and purchase the property or acquire or take possession thereof and, in such event, complete, administer and pay the principal of and interest on any obligations incurred in connection with such property and dispose of and otherwise deal with such property in such manner as the corporation may deem advisable to protect its interest therein;

(c) To fix, revise, charge and collect fees and other charges in connection with the making of loans, the purchasing of mortgage loans, and any other services rendered by the corporation;

(d) To arrange for guarantees of its bonds, notes or other obligations by the federal government or by any private insurer and to pay any premiums therefor;

(e) Notwithstanding any law to the contrary, but subject to any agreement with bondholders or noteholders, to invest money of the corporation not required for immediate use, including proceeds from the sale of any bonds or notes;

(i) In obligations of any municipality or the state or the United States of America;

(ii) In obligations the principal and interest of which are guaranteed by the state or the United States of America;

(iii) In obligations of any corporation wholly owned by the United States of America;

(iv) In obligations of any corporation sponsored by the United States of America which are, or may become, eligible as collateral for advances to member banks as determined by the Board of Governors of the Federal Reserve System;

(v) In obligations of insurance firms or other corporations whose investments are rated "A" or better by recognized rating companies;

(vi) In certificates of deposit or time deposits of qualified depositories of the state as approved by the State Depository Commission, secured in such manner, if any, as the corporation shall determine;

(vii) In contracts for the purchase and sale of obligations of the type specified in items (i) through (v) above;

(viii) In repurchase agreements secured by obligations specified in items (i) through (v) above;

(ix) In money market funds, the assets of which are required to be invested in obligations specified in items (i) through (vi) above;

(f) Subject to any agreement with bondholders or noteholders, to purchase, and to agree to purchase, bonds or notes of the corporation at a price not exceeding: (i) if the bonds or notes are then redeemable, the redemption price then applicable plus accrued interest to the date of purchase; or (ii) if the bonds or notes are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption at the option of the corporation plus accrued interest to the date of purchase;

(g) Subject to the provisions of this article, to contract for and to accept any gifts, grants or loans of funds or property or financial or other aid in any form from federal, state or local governments, private or public entities, or individuals;

(h) To enter into agreements or other transactions with the federal or state government, any agency thereof or any municipality in furtherance of the purposes of this article; to operate and administer loan programs of the federal government, the State of Mississippi, or any governmental agency thereof; and to operate and administer any program of housing assistance for persons and families of low or moderate income, however funded;

(i) To establish a benevolent loan fund, housing development fund, or such additional and further funds as may be necessary and desirable to accomplish any corporate purpose or to comply with the provisions of any agreement made by the corporation or any resolution approved by the corporation. The resolution establishing such a fund shall specify the source of monies from which it shall be funded and the purposes for which monies held in the fund shall be disbursed;

(j) In carrying out the provisions of this article, the corporation shall cooperate with the housing authorities created under Sections 43-33-1 through 43-33-69 and Sections 43-33-101 through 43-33-137, Mississippi Code of 1972;

(k) To accept letters of credit and other credit facilities necessary to make loans authorized herein to repay bonds or notes issued by the corporation;

(*l*) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this article.

SOURCES: Laws, 1989, ch. 525, § 10; Laws, 1991, ch. 528, § 5, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (5)(b). The subparagraph designation "(iv)" was inserted after the semicolon following subparagraph (iii). The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Section 27-105-1 provides that wherever the term "State Depository Commission" appears in any law, the same shall mean the State Treasurer.

Cross References — Deposit of moneys collected by Mississippi Home Corporation, see § 43-33-747.

Investment of monies collected by Mississippi Home Corporation, see § 43-33-759.

§ 43-33-719. Loan requirements; purchase of loans.

(1) In connection with the making of any of the types of loans authorized by this article to any entity the corporation:

(a) May require that the borrower issue and deliver to the corporation an evidence of its indebtedness to the corporation (which evidence shall constitute a general obligation of the borrower as the corporation shall determine) which shall contain such provisions consistent with this section as the corporation shall determine, including but not limited to, date, time of maturing and prepayment clause;

(b) May require that the interest rate or rates and other terms of such loans or any collection of such loans made from the proceeds of any issue of bonds or notes of the corporation shall, together with any other monies available therefor, including reserve funds, be at least sufficient to assure the payment of such bonds or notes and the interest thereon as the same become due;

(c) May require that loans made pursuant to this section be secured as to payment of both principal and interest by a pledge of collateral security of such type and in such amounts as the corporation shall determine to be useful to assure the payment of such loans and the interest thereon as the same become due, and in the case of loans to institutional lenders, such collateral security shall consist of:

(i) Direct or guaranteed obligations of the United States of America;

(ii) Obligations of any municipality or the state or any state agency;

(iii) Mortgage loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration and such other mortgages insured or guaranteed by the federal government or by a private insurer as to payment of principal and interest as shall be approved by the corporation; or

(iv) Conventional mortgage loans approved by the corporation;

(d) May require that any collateral for loans be deposited with a bank or trust company or other financial institution acceptable to the corporation located in the state and designated by the corporation as custodian therefor. The corporation may also require the entity receiving such loan to enter into an agreement with the corporation containing such provisions as the corporation shall deem necessary to: (i) adequately identify and maintain such collateral; (ii) service such collateral, if appropriate; and (iii) require such entity to hold such collateral as an agent for the corporation and be accountable to the corporation as the trustee of an express trust for the application and disposition thereof and the income therefrom. In the case of loans to institutional lenders, the corporation shall require the lender to enter into such an agreement;

(e) May also establish such additional requirements as it shall deem necessary with respect to the pledging, assigning, setting aside or holding of such collateral and the making of substitutions therefor or additions thereto and the disposition of income and receipts therefrom;

(f) Shall require as a condition of each loan that the borrower, within a prescribed period after receipt, shall have disbursed or applied the loan proceeds for the purposes for which the loan was made in an aggregate principal amount equal to the amount of such loan;

(g) May require the submission to it by each borrower of evidence satisfactory to the corporation of compliance with the terms of such loan, and in connection therewith may, through its members, employees or agents, inspect any books and records of any such entity;

(h) May require, as a condition of any loans, representations and warranties deemed necessary to secure the loans and carry out the purpose of this section;

(i) May enforce compliance with the terms of its agreement with any entity by decree of any court of competent jurisdiction. The corporation may require, as a condition of any loan to any national banking association, the consent of such association to the jurisdiction of courts of this state over any proceeding. The corporation may also require, as a condition of any such loan, agreement by such entity to the payment of penalties to the corporation for violation of its undertakings to the corporation, and such penalties shall be recoverable at the suit of the corporation; and

(j) To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, the provisions hereof shall control.

(2) In connection with the purchase from any lender of any of the types of loans authorized by this article, or any portion thereof or any participation therein, the corporation:

(a) May require as a condition of purchase of such loans either:

(i) That such loans be mortgage loans owned by the mortgage lenders and that such mortgage lenders, within a prescribed period after receipt of the purchase price, shall enter into written commitments to loan and, within a prescribed period thereafter, may loan an amount not to exceed the entire purchase price of such purchased loans on new loans, which new loans shall have such terms and conditions as the corporation may prescribe by regulation; or

(ii) That such purchased loans qualify as new loans and were originated by the lenders for the purpose of selling them to the corporation;

(b) Shall require the submission to it, by each mortgage lender from which the corporation has purchased existing loans, evidence satisfactory to the corporation of the making of new loans as required by the corporation, and in connection therewith may, through its members, employees or agents, inspect the books and records of any such mortgage lender;

(c) May enforce compliance by any mortgage lender with the terms of its agreement with or undertaking to the corporation with respect to the making of any new loans by decree of any court of competent jurisdiction. The corporation may require as a condition of purchase of loans from any national banking association the consent of such association to the jurisdiction of courts of this state over any such proceeding. The corporation may also require, as a condition of the corporation's purchase of loans, agreement by any mortgage lender to the payment of penalties to the corporation for violation by the mortgage lender of its undertakings to the corporation, and such penalties shall be recoverable at the suit of the corporation;

(d) May require as a condition of purchase of any loan from a mortgage lender that the mortgage lender represent and warrant to the corporation that: (i) the unpaid principal balance of such loan and this interest rate thereon have been accurately stated to the corporation; (ii) the amount of the unpaid balance is justly due and owing in accordance with the terms thereof; (iii) the mortgage lender has no notice of the existence of any counterclaim, offset or defense asserted by the maker or his successor in interest; (iv) such loan is evidenced by a bond or promissory note and a mortgage which has been properly recorded with the appropriate public official; (v) the mortgage constitutes a valid lien on the real property described to the corporation subject only to such liens, reservations, exceptions or encumbrances as may be permitted by the rules or regulations of the corporation; (vi) the maker is not now in default in the payment of any installment of principal or interest, escrow funds, taxes or otherwise in the performance of his obligations under the mortgage or loan documents and has not, to the knowledge of the mortgage lender, been in default in the performance of any such obligations for a period of longer than sixty (60) days during the life thereof; (vii) the improvements to mortgaged real property are permanently affixed thereto and the real property together with improvements thereon are covered by a valid and subsisting policy of insurance issued by a company authorized to issue such policies in this state and providing fire and extended coverage in such amounts as the corporation may prescribe by regulation; and (viii), in the case of mortgage loans, the mortgage loan meets the prevailing investment quality standards for mortgage loans of that type in the state;

(e) May require that each mortgage lender be liable to the corporation for any damages suffered by the corporation by reason of any misrepresentation or the breach of any warranty, and in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, the mortgage lender shall, at the option of the corporation, repurchase the loan for the original purchase price adjusted for amounts subsequently paid thereon, as the corporation may determine;

(f) Shall not be required to inspect or take possession of the loan mortgage or documents if the mortgage lender from which the loan is purchased by the corporation shall enter into a contract to service such loan and account to the corporation therefor.

SOURCES: Laws, 1989, ch. 525, § 11, eff from and after July 1, 1989.

§ 43-33-721. Adoption of rules, regulations, resolutions and bylaws by corporation.

The corporation shall adopt, and may from time to time modify or repeal, rules, regulations, resolutions and bylaws on issues including, but not limited to the following:

(a) Income levels for the classification of persons of low or moderate income in accordance with the factors set forth in the definition of persons of low or moderate income in Section 43-33-703; however, any such rules shall set as a priority the needs of very low and low income persons;

(b) The making of loans and the purchase of mortgage loans, to implement the powers authorized and to achieve the purposes set forth in this article;

(c) Setting schedules of any fees and charges to be imposed by the corporation;

(d) Where intended, assuring that the interest on its bonds or notes qualifies for tax exemption under applicable federal laws; and

(e) Any other matters related to the duties and the exercise of the powers of the corporation.

SOURCES: Laws, 1989, ch. 525, § 12, eff from and after July 1, 1989.

§ 43-33-723. Prohibition against discrimination.

No person shall be discriminated against because of race, religious principles, color, sex, national origin, ancestry or handicap by the corporation, any qualified sponsor, any lender, or any agent or employee thereof in connection with any housing development or eligible loan. No person shall be discriminated against because of age, nor shall any family be discriminated against because of children, in admission to, or continuance of occupancy in, any housing project receiving assistance under this article except for any housing project constructed under a program restricting occupancy to persons sixty-two (62) years of age or older and any directors of their immediate households or their occupant surviving spouses.

SOURCES: Laws, 1989, ch. 525, § 13, eff from and after July 1, 1989.

RESEARCH REFERENCES

ALR. State civil rights legislation prohibiting sex discrimination in housing. 81 A.L.R.4th 205.

Award of attorney's fees to prevailing parties in actions under Fair Housing Act, 42 U.S.C.S. § 3613(c)(2). 159 A.L.R. Fed. 279.

Who is recipient of, and what constitutes program or activity receiving, federal financial assistance for purposes of § 504 of Rehabilitation Act (29 U.S.C.S. § 794), which prohibits any program or activity receiving financial assistance from discriminating on basis of disability. 160 A.L.R. Fed. 297.

When are public entities required to provide services, programs, or activities to disabled individuals under Americans with Disabilities Act, 42 U.S.C.S. § 12132. 160 A.L.R. Fed. 637.

When does a public entity discriminate against individuals in its provision of services, programs, or activities under the Americans with Disabilities Act, 42 U.S.C.S. § 12132. 163 A.L.R. Fed. 339.

Am Jur. 20 Am. Jur. Proof of Facts 3d 361, Disability Discrimination Under the Americans with Disability Act.

§ 43-33-725. Advisory board.

The corporation may, if it deems necessary, create an advisory board to the corporation to assist in the furtherance of the purposes of this article. The corporation shall determine the size, structure and powers and duties of the advisory board. The members of the advisory board shall be appointed by the Governor for the terms set by the corporation and shall serve without compensation.

SOURCES: Laws, 1989, ch. 525, § 14, eff from and after July 1, 1989.

§ 43-33-727. Mississippi Home Corporation Oversight Committee.

There is hereby created the Mississippi Home Corporation Oversight Committee. Such oversight committee shall consist of five (5) Senators appointed by the President of the Senate and five (5) Representatives appointed by the Speaker of the House of Representatives, who shall serve in an advisory capacity to the corporation. The members thereof shall report the actions of the corporation to the appropriate legislative committees. The oversight committee shall have no jurisdiction or vote on any matter within the jurisdiction of the corporation. When the Legislature is not in session, members shall be paid per diem and all actual and necessary expenses, including mileage expenses, from their respective contingent expense funds at the rate authorized for committee meetings when the Legislature is not in session; however, no per diem and expenses will be paid when the Legislature is in session. The terms of the members of the oversight committee shall expire at the end of their terms of office.

SOURCES: Laws, 1989, ch. 525, § 15, eff from and after July 1, 1989.

§ 43-33-729. Issuance of negotiable bonds and notes; purpose.

[Through June 30, 2019, this section shall read as follows:]

(1) The corporation may from time to time issue its negotiable bonds and notes in such principal amounts as, in the opinion of the corporation, shall be necessary to provide sufficient funds for achieving the corporate purposes thereof, including operating expenses and reserves, the payment of interest on bonds and notes of the corporation, establishment of reserves to secure such bonds and notes, and all other expenditures of the corporation incident to and necessary or convenient to carry out its corporate purposes and powers. Provided, except as otherwise authorized herein, bonds and notes may be issued annually under this article in an aggregate principal

amount not to exceed Three Hundred Fifty Million Dollars ($350,000,000.00), excluding bonds and notes issued to refund outstanding bonds and notes, bonds and notes in which the corporation acts as a conduit issuer and bonds and notes issued for purposes related to Hurricane Katrina. Such annual period shall be the same as the fiscal year of the state, commencing with the annual period of July 1, 2009, to June 30, 2010.

(2) The provisions of Sections 75-71-1 through 75-71-57, Mississippi Code of 1972 (the "Mississippi Securities Act"), shall not apply to bonds and notes issued under the authority of this article, and no application for a formal exemption from the provisions of such act shall be required with respect to such bonds and notes.

(3) Except as may otherwise be expressly provided by the corporation, all bonds and notes issued by the corporation shall be general obligations of the corporation, secured by the full faith and credit of the corporation and payable out of any monies, assets or revenues of the corporation, subject only to any agreement with the bondholders or noteholders pledging any particular monies, assets or revenues.

The corporation may issue bonds or notes to which the principal and interest are payable:

(a) Exclusively from the revenues of the corporation resulting from the use of the proceeds of such bonds or notes; or

(b) Exclusively from any particular revenues of the corporation, whether or not resulting from the use of the proceeds of such bonds or notes.

(4) Any bonds or notes issued by the corporation may be additionally secured:

(a) By private insurance, by a direct pay or standby letter of credit, or by any other credit enhancement facility procured by the corporation for the payment of any such bonds;

(b) By a pledge of any grant, subsidy or contribution from the United States or any agency or instrumentality thereof, or from the state or any agency, instrumentality or political subdivision thereof, or from any person, firm or corporation; or

(c) By the pledge of any securities, funds or reserves (or earnings thereon) available to the corporation.

(5) Bonds and notes issued by the corporation shall be authorized by a resolution or resolutions of the corporation adopted as provided for by this article; provided, that any such resolution authorizing the issuance of bonds or notes may delegate to an officer or officers of the corporation the power to issue such bonds or notes from time to time and to fix the details of any such issues of bonds or notes by an appropriate certification of such authorized officer.

(6) Except as specifically provided in this article, no notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the issuance, sale or delivery of any bonds or notes of the corporation pursuant to the provisions of this article. However, all bonds or

notes issued pursuant to this article may be validated, except as otherwise provided in this section, in accordance with the provisions of Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, in the same manner as provided therein for bonds issued by a municipality. Any such validation proceedings shall be held in the First Judicial District of Hinds County, Mississippi. Notice thereof shall be given by publication in any newspaper published in the City of Jackson, Mississippi, and of general circulation throughout the state.

(7) It is hereby determined that the corporation is the sole entity in the state authorized to issue bonds or notes for the purposes of financing low and moderate income rental or residential housing as set forth in this article. In addition, the corporation shall have the power to issue mortgage credit certificates, as provided by Section 25 of the Internal Revenue Code of 1954, as amended, and to comply with all of the terms and conditions set forth in Section 25, as the same may be amended from time to time.

[From and after July 1, 2019, this section shall read as follows:]

(1) The corporation may from time to time issue its negotiable bonds and notes in such principal amounts as, in the opinion of the corporation, shall be necessary to provide sufficient funds for achieving the corporate purposes thereof, including operating expenses and reserves, the payment of interest on bonds and notes of the corporation, establishment of reserves to secure such bonds and notes, and all other expenditures of the corporation incident to and necessary or convenient to carry out its corporate purposes and powers. Provided, except as otherwise authorized herein, bonds and notes shall not be issued under this article in an aggregate principal amount exceeding the aggregate principal amount of bonds and notes outstanding on July 1, 2019, excluding bonds and notes issued to refund outstanding bonds and notes, bonds and notes in which the corporation acts as a conduit issuer and bonds and notes issued for purposes related to Hurricane Katrina.

(2) The provisions of Sections 75-71-1 through 75-71-57, Mississippi Code of 1972 (the "Mississippi Securities Act"), shall not apply to bonds and notes issued under the authority of this article, and no application for a formal exemption from the provisions of such act shall be required with respect to such bonds and notes.

(3) Except as may otherwise be expressly provided by the corporation, all bonds and notes issued by the corporation shall be general obligations of the corporation, secured by the full faith and credit of the corporation and payable out of any monies, assets or revenues of the corporation, subject only to any agreement with the bondholders or noteholders pledging any particular monies, assets or revenues.

The corporation may issue bonds or notes to which the principal and interest are payable:

(a) Exclusively from the revenues of the corporation resulting from the use of the proceeds of such bonds or notes; or

(b) Exclusively from any particular revenues of the corporation, whether or not resulting from the use of the proceeds of such bonds or notes.

(4) Any bonds or notes issued by the corporation may be additionally secured:

(a) By private insurance, by a direct pay or standby letter of credit, or by any other credit enhancement facility procured by the corporation for the payment of any such bonds;

(b) By a pledge of any grant, subsidy or contribution from the United States or any agency or instrumentality thereof, or from the state or any agency, instrumentality or political subdivision thereof, or from any person, firm or corporation; or

(c) By the pledge of any securities, funds or reserves (or earnings thereon) available to the corporation.

(5) Bonds and notes issued by the corporation shall be authorized by a resolution or resolutions of the corporation adopted as provided for by this article; provided, that any such resolution authorizing the issuance of bonds or notes may delegate to an officer or officers of the corporation the power to issue such bonds or notes from time to time and to fix the details of any such issues of bonds or notes by an appropriate certification of such authorized officer.

(6) Except as specifically provided in this article, no notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the issuance, sale or delivery of any bonds or notes of the corporation pursuant to the provisions of this article. However, all bonds or notes issued pursuant to this article may be validated, except as otherwise provided in this section, in accordance with the provisions of Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, in the same manner as provided therein for bonds issued by a municipality. Any such validation proceedings shall be held in the First Judicial District of Hinds County, Mississippi. Notice thereof shall be given by publication in any newspaper published in the City of Jackson, Mississippi, and of general circulation throughout the state.

(7) It is hereby determined that the corporation is the sole entity in the state authorized to issue bonds or notes for the purposes of financing low and moderate income rental or residential housing as set forth in this article. In addition, the corporation shall have the power to issue mortgage credit certificates, as provided by Section 25 of the Internal Revenue Code of 1954, as amended, and to comply with all of the terms and conditions set forth in Section 25, as the same may be amended from time to time.

SOURCES: Laws, 1989, ch. 525, § 16; Laws, 1993, ch. 567, § 1; Laws, 1995, ch. 529, § 1; Laws, 2000, ch. 627, § 2; Laws, 2003, ch. 456, § 1; Laws, 2006, ch. 500, § 1; Laws, 2009, ch. 486, § 1; Laws, 2014, ch. 338, § 1, eff from and after passage (approved Mar. 13, 2014.)

Editor's Note — Sections 75-71-1 through 75-71-57, referred to in subsection (2), were repealed by Laws of 1981, ch. 521, § 418, effective from and after July 1, 1981. Similar provisions, known as the Mississippi Securities Act, may be found at §§ 75-71-101 et seq.

Amendment Notes — The 2014 amendment substituted "July 1, 2019" for "July 1, 2014" throughout.

Federal Aspects — Section 25 of the Internal Revenue Code, see 26 USCS § 25.

§ 43-33-731. Form and content of bonds and notes.

Bonds and notes of the corporation shall:

(a) State on the face thereof that they:

(i) Are payable both as to principal and interest solely out of the assets of the corporation; and

(ii) Do not constitute an obligation, either general or special, of the state or municipality or any other political subdivision of the state; and

(b) Be:

(i) Either registered, registered as to principal only or in coupon form;

(ii) Issued in such denominations as the corporation may prescribe;

(iii) Fully negotiable instruments under the laws of the state;

(iv) Signed on behalf of the corporation with the manual or facsimile signature of the chairman or vice-chairman, attested by the manual or facsimile signature of the secretary, and have impressed or imprinted thereon the seal of the corporation or a facsimile thereof, and the coupons attached thereto shall be signed with the facsimile signature of such chairman or vice-chairman. If the officers whose signatures or countersignatures appear on any bonds, notes or coupons shall cease to be such officers before the delivery of such bonds, notes or coupons, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery;

(v) Payable as to principal at such time or times, at such place or places, and with such reserved rights of prior redemption as the corporation may determine or provide;

(vi) Payable as to interest at such rate or rates (not to exceed a greater rate to maturity than that established in Section 75-17-103, Mississippi Code of 1972) and at such time or times as the corporation may determine or provide;

(vii) Sold at such price or prices, at public or private sale, and in such manner as the corporation may prescribe; and the corporation may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale thereof; and

(viii) Issued under and subject to such terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, and interest and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with this article, as may be found to be necessary by the corporation for the most advantageous sale thereof, which may include, but not be limited to, covenants with the holders of the bonds or the notes, as to:

1. Pledging or creating a lien, to the extent provided by such resolution or resolutions, on all or any part of any money or property of the corporation or of any monies held in trust or otherwise by others to secure the payments of such bonds or notes;

2. Otherwise providing for the custody, collection, securing, investment and payment of any money of or due to the corporation;

3. The setting aside of reserves or sinking funds and the regulation or disposition thereof;

4. Limitations on the purpose to which the proceeds of sale of any issue of such bonds or notes then or thereafter to be issued may be applied;

5. Limitations on the issuance of additional bonds or notes and on the refunding of outstanding or other bonds or notes;

6. The procedure, if any, by which the terms of any contract with the holders of bonds or notes may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

7. The creation of special funds into which any money of the corporation may be deposited;

8. Vesting in a trustee or trustees such properties, rights, powers and duties in trust as the corporation may determine, which may include any or all of the usual and customary rights, powers and duties of the trustee appointed for the holders of any issue of bonds or notes as agreed upon by the corporation;

9. Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the corporation and providing for the rights and remedies of the holders of bonds or notes in the event of such default; provided, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this article; and

10. Any other matters of like or different character, which in any way affect the security and protection of the bonds or notes and the rights of the holders thereof.

SOURCES: Laws, 1989, ch. 525, § 17, eff from and after July 1, 1989.

§ 43-33-733. Issuance of bonds or notes for refunding outstanding bonds or notes.

The corporation is authorized to issue its bonds or notes for the purpose of refunding any bonds or notes of the corporation then outstanding. In addition, the corporation may issue its bonds or notes for the purpose of refunding any bonds or notes of (a) any local housing authority or authorities, or (b) any regional housing authority or authorities. The corporation shall have no power or authority to issue its bonds or notes for the purpose of refunding bonds or notes of any local housing authority or any regional housing authority unless the refunding and the corporation's participation therein are authorized by a resolution or resolutions adopted by the housing authority or authorities whose bonds or notes will be refunded by the bonds or notes issued by the corporation. The resolution or resolutions shall request the corporation to issue its bonds or notes for the purpose of refunding bonds or notes of the housing authority or authorities then outstanding and shall contain such other terms and conditions as necessary or appropriate. The total amount of any such refunding bonds or notes shall be an amount sufficient to effect the refunding and may include an amount sufficient to pay (a) the principal amount of the refunded bonds or notes, (b) interest accrued or to accrue to the date of maturity or the date of redemption of the bonds or notes to be refunded which need not necessarily be on the first available redemption date, (c) any redemption premiums to be paid thereon, (d) any reasonable expenses incurred in connection with such refunding, and (e) any other reasonable costs deemed necessary by the corporation to effect the refunding. The proceeds of such refunding bonds or notes may be applied in the manner determined by the corporation and may be placed in escrow and invested in the manner and on the terms determined by the corporation. All such bonds or notes shall be refunded in accordance with the Mississippi Bond Refinancing Act, Section 31-27-1 et seq.

SOURCES: Laws, 1989, ch. 525, § 18; Laws, 1991, ch. 528, § 6, eff from and after July 1, 1991.

§ 43-33-735. Pledge of earnings, revenues or other assets; liens.

It is the intention of the Legislature that:

(a) Any pledge of earnings, revenues or other assets consistent with the provisions of this article shall be valid and binding from the time when the pledge is made;

(b) Any earnings, revenues or other assets so pledged and thereafter received by the corporation shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act;

(c) Such liens shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the corporation irrespective of whether such parties have notice thereof; and

(d) Neither the resolution nor any other instrument by which a pledge is created need be recorded.

SOURCES: Laws, 1989, ch. 525, § 19, eff from and after July 1, 1989.

§ 43-33-737. Liability on issuance of bonds or notes.

(1) The directors of the corporation, the advisory committee, or any person executing the bonds, notes or other obligations of the corporation shall not be personally liable for such bonds, notes or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof while acting in the scope of their authority.

(2) The bonds, notes and other obligations of the corporation shall not be a debt of the state or any agency, instrumentality or political subdivision thereof.

SOURCES: Laws, 1989, ch. 525, § 20, eff from and after July 1, 1989.

§ 43-33-739. Creation of debt service reserve funds.

The corporation may create and establish one or more reserve funds to be known as "debt service reserve funds" and the corporation may create and establish such other reserve funds as it shall deem advisable and necessary.

SOURCES: Laws, 1989, ch. 525, § 21, eff from and after July 1, 1989.

§ 43-33-741. Agreement by state not to alter vested rights.

The state does hereby pledge to and agree with the holders of any bonds or notes issued under this article that the state will not limit or alter the rights hereby vested in the corporation to fulfill the terms of any agreements made with the holders thereof in keeping with the provisions of this article, or in any way impair the rights and remedies of such holders until such bonds or notes together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. The corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes. The chancery court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders or noteholders. The venue of any such suit, action or proceeding shall be in the First Judicial District of Hinds County, Mississippi.

SOURCES: Laws, 1989, ch. 525, § 22, eff from and after July 1, 1989.

§ 43-33-743. Investment in sinking funds, monies or other funds.

The state and all public officers, municipal corporations, political subdivisions, and public bodies; all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees and other fiduciaries and the Mississippi Public Employees' Retirement System may legally invest any sinking funds, monies or other funds belonging to them or within their control in any bonds or notes issued by the corporation, and such bonds or notes shall be authorized security for all public deposits, it being the purpose of this article to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or notes, and that any such bonds or notes shall be authorized security for all public deposits. However, nothing contained in this article with regard to legal investments shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

SOURCES: Laws, 1989, ch. 525, § 23, eff from and after July 1, 1989.

§ 43-33-745. Purpose for creation of corporation; covenants; immunity from taxation.

(1) It is hereby determined that the creation of the corporation is in all respects for the benefit of the people of the state, for the improvement of their health and welfare and for the protection of the economy, and that such purposes are public purposes and the corporation will be performing an essential governmental function in the exercise of the powers conferred upon the corporation by this article. In consideration of the acceptance of and payment for the bonds and notes issued by the corporation pursuant to this article, the state hereby covenants with the purchasers and all subsequent holders and transferees of such bonds and notes that the income from such bonds and notes shall at all times be free from taxation, except for estate or gift taxes and taxes on transfers.

(2) The corporation may issue bonds or notes designated as taxable bonds or notes, and any immunity to taxation by the United States government of income from bonds or notes so designated is hereby waived.

(3) The income and operations of the corporation shall be exempt from taxation of every kind and nature.

SOURCES: Laws, 1989, ch. 525, § 24, eff from and after July 1, 1989.

ATTORNEY GENERAL OPINIONS

The Mississippi Home Corporation, while a public body corporate created separate and apart from the state, is a governmental instrumentality and is afforded tax exempt status. Atkinson, Apr. 5, 2002, A.G. Op. #02-0156.

§ 43-33-747. Deposit of monies; withdrawals; audits; fees; reports.

(1) All money of the corporation from whatever source derived, except as otherwise authorized or provided in this article, shall be deposited with one or more qualified depositories of the state as approved by the State Depository Commission and designated by the corporation or invested in accordance with Section 43-33-717(5)(e). The money in such accounts shall be withdrawn on the order of such person or persons as the corporation may authorize. All deposits of such money shall, if required by the corporation, be secured in such manner as the corporation may determine. The State Auditor and his legally autho-

rized representatives are authorized and empowered from time to time to examine the accounts and books of the corporation, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other record and papers relating to its financial standing; at a minimum an audit shall be made annually and a copy thereof shall be filed with the State Treasurer; the corporation shall pay such reasonable fee for such examination as the State Auditor shall determine.

(2) The corporation shall have power to contract with holders of any of its bonds or notes as to the custody, collection, securing, investment and payment of any money of the corporation, of any money held in trust or otherwise for the payment of bonds or notes, and to carry out such contract. Money held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of such money may be secured in the same manner as money of the corporation, and all banks and trust companies are authorized to give such security for such deposits.

(3) Subject to the provisions of any contract with bondholders or noteholders and to the approval of the Department of Audit, the corporation shall prescribe a system of accounts in accordance with generally accepted accounting principles (GAAP).

(4) The corporation shall submit to the Governor, State Auditor and both houses of the Legislature, an annual report on the activities of the corporation and, within thirty (30) days of the receipt thereof by the corporation, a copy of the report of every external examination of the books and accounts of the corporation.

SOURCES: Laws, 1989, ch. 525, § 25, eff from and after July 1, 1989.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error at the end of the first sentence of subsection (1) by substituting "corporation or invested in accordance with Section 43-33-717(5)(e)" for "corporation or in accordance with Section 43-33-717(3)(e)." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 43-33-749. Personal liability of corporate directors, advisory board members, etc. while acting in scope of authority.

Neither the directors of the corporation, the advisory board, nor any person or persons acting in their behalf, while acting within the scope of their authority, shall be subject to any personal liability resulting from carrying out any of the powers granted herein in accordance with his or her good faith belief that he or she is acting in the best interests of the corporation.

SOURCES: Laws, 1989, ch. 525, § 26, eff from and after July 1, 1989.

§ 43-33-751. Conflict of interest; disclosure.

The directors shall comply with the provisions of Section 25-4-101 et seq.

SOURCES: Laws, 1989, ch. 525, § 27; Laws, 2000, ch. 627, § 3, eff from and after passage (approved May 23, 2000.)

Cross References — Conflict of interest and improper use of public office, see §§ 25-4-101 et seq.

§ 43-33-753. Services of state officers and state agencies.

All state officers and all state agencies are hereby empowered to render such services to the corporation within their respective functions as may be requested by the corporation.

SOURCES: Laws, 1989, ch. 525, § 28, eff from and after July 1, 1989.

§ 43-33-755. Preference of certain actions or proceedings questioning validity; venue.

Any action or proceeding to which the corporation or the people of the state may be a part in which any question arises as to the validity of this article shall be preferred over all other civil causes in all courts of the state and shall be heard and determined in preference to all other civil business pending therein irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the corporation in any action or proceeding questioning the validity of the article in which he may be allowed to intervene. The venue of any such action or proceeding shall be in the First Judicial District of Hinds County, Mississippi.

SOURCES: Laws, 1989, ch. 525, § 29, eff from and after July 1, 1989.

§ 43-33-757. Term of corporate existence; termination.

The corporation and its corporate existence shall continue until terminated by law, provided that no such law shall take effect so long as the corporation shall have bonds, notes, or other obligations outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the corporation, all of its rights and properties in excess of its obligations shall pass to and be vested in the state as follows:

(a) All excess monies shall be deposited into the General Fund of the State Treasury; and

(b) All of the property shall be vested in the State Fiscal Management Board, or its successor, unless otherwise provided by the Legislature.

SOURCES: Laws, 1989, ch. 525, § 30, eff from and after July 1, 1989.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

§ 43-33-759. Mississippi Affordable Housing Development Fund; powers and duties.

There is hereby created in the State Treasury a special fund to be known as the Mississippi Affordable Housing Development Fund to be administered as a revolving fund for the provision of affordable housing to very low income, low income, and moderate income persons. The fund shall be used exclusively to support programs created or administered by the Mississippi Home Corporation under the powers granted to it by law. To this fund shall be deposited all loan repayments, penalties, and other fees and charges accruing to the fund, and any appropriations, donations, gifts, grants or loans which may be made thereto; however, no bond funds shall be deposited into the special fund unless authorized by the Legislature. Monies in the fund which are not currently needed for the programs of the Home Corporation shall be invested by the State Treasurer in such securities as are authorized for the investment of funds of the Home Corporation in Section 43-33-717(5)(e). The interest received on any such investment shall be credited to the fund. Monies remaining in the special fund at the end of a fiscal year shall not lapse into the state General Fund.

The State Fiscal Management Board is authorized and directed to draw warrants upon such funds from time to time upon requisition of the Home Corporation executed by its executive director, and the State Treasurer is hereby authorized and directed to pay such warrants. The Home Corporation shall have continuing authority to expend funds up to the maximum amount received into the special fund.

SOURCES: Laws, 1989, ch. 525, § 31, eff from and after July 1, 1989.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Committee on Compilation, Revision and Publication of Legislation corrected an error in a Statutory Reference. The reference to "Section 43-33-717(3)(e)" in the first paragraph was changed to read "Section 43-33-717(5)(e)." The correction was ratified by the Joint Committee at its August 5, 2008, meeting.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

§ 43-33-761. Construction of Article in conjunction with other Code provisions.

Nothing in this article shall be construed as affecting the continued existence, powers, duties or structure of the housing authorities created and empowered under Sections 43-33-1 through 43-33-69 and Sections 43-33-101 through 43-33-137, Mississippi Code of 1972, or the administration of programs thereunder.

SOURCES: Laws, 1989, ch. 525, § 32, eff from and after July 1, 1989.

§ 43-33-763. Public official not to derive income from issuance of bonds.

No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds under this article contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

SOURCES: Laws, 1989, ch. 525, § 33, eff from and after July 1, 1989.

Cross References — Conflicts of interest, see §§ 25-4-101 et seq.

§ 43-33-765. Construction of Article.

This article being necessary for the welfare of the state and its inhabitants shall be liberally construed to effect the purposes thereof. If any section, provision, paragraph, sentence, phrase or word of this article shall be held to be invalid by any court of competent jurisdiction, the remainder of this article shall not be affected thereby.

SOURCES: Laws, 1989, ch. 525, § 34, eff from and after July 1, 1989.

§ 43-33-767. Authorization to issue general obligation bonds; resolutions; use of earnings.

(1) In addition to the authority granted under this article to issue revenue bonds, the Mississippi Home Corporation is authorized to declare by resolution the necessity for issuance of negotiable general obligation bonds of the State of Mississippi to provide funds for the Mississippi Affordable Housing Development Fund established in Section 43-33-759. Upon the adoption of a resolution by the board, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by this section, the corporation shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of such resolution or resolutions, the State Bond Commission, in its discretion, shall act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The amount of bonds issued to fund housing activities authorized by this section shall not exceed Six Million Dollars ($6,000,000.00) in the aggregate.

(2) Any investment earnings on amounts deposited into the Mississippi Affordable Housing Development Fund shall be used to pay debt service on the general obligation bonds issued under subsection (1) of this section in accordance with proceedings authorizing issuance of such bonds.

SOURCES: Laws, 1994, ch. 556, § 1, eff from and after July 1, 1994.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2) by substituting "the general obligation bonds issued under subsection (1) of this section" for "the general obligation bonds issued under subsection (2) of this section." The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 43-33-769. Payment of principal and interest; bond specifications.

The principal of and interest on the bonds authorized under Sections 43-33-767 through 43-33-797 shall be payable in the manner provided in this section. Such bonds shall bear such date or dates, be in such denomination or denominations, bear interest at such rate or rates (not to exceed the limits set forth in Section 75-17-101), be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times not to exceed twenty (20) years from date of issue, be redeemable before maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges and shall be substantially in such form, all as shall be determined by resolution of the State Bond Commission.

SOURCES: Laws, 1994, ch. 556, § 2, eff from and after July 1, 1994.

§ 43-33-771. Signature on bonds; interest coupons.

The bonds authorized by Sections 43-33-767 through 43-33-797 shall be signed by the Chairman of the State Bond Commission, or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, attested by the Secretary of the State Bond Commission. The interest coupons, if any, to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever any such bonds shall have been signed by the officials designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers before the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until their delivery to the purchaser, or had been in office on the date such bonds may bear. However, notwithstanding anything herein to the contrary, such bonds may be issued as provided in the Registered Bond Act of the State of Mississippi.

SOURCES: Laws, 1994, ch. 556, § 3, eff from and after July 1, 1994.

Cross References — Registered Bond Act, see §§ 31-21-1 et seq.

§ 43-33-773. Bonds and coupons are negotiable instruments.

All bonds and interest coupons issued under the provisions of Sections 43-33-767 through 43-33-797 have all the qualities and incidents of negotiable instruments under the provisions of the Mississippi Uniform Commercial Code, and in exercising the powers granted by Sections 43-33-767 through 43-33-797, the State Bond Commission shall not be required to and need not comply with the provisions of the Mississippi Uniform Commercial Code.

SOURCES: Laws, 1994, ch. 556, § 4, eff from and after July 1, 1994.

Cross References — Uniform Commercial Code — Negotiable instruments, see § 75-3-101.

§ 43-33-775. Sale and form of bonds.

The State Bond Commission shall act as the issuing agent for the bonds authorized under Sections 43-33-767 through 43-33-797, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, pay all fees and costs incurred in such issuance and sale, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The commission is authorized and empowered to pay the costs that are incident to the sale, issuance and delivery of the bonds authorized under Sections 43-33-767 through 43-33-797 from the proceeds derived from the sale of such bonds. The commission shall sell such bonds on sealed bids at public sale, and for such price as it may determine to be for the best interest of the State of Mississippi, but no such sale shall be made at a price less than par plus accrued interest to the date of delivery of the bonds to the purchaser. All interest accruing on such bonds so issued shall be payable semiannually or annually; however, the first interest payment may be for any period of not more than one (1) year.

Notice of the sale of any such bond shall be published at least one (1) time, not less than ten (10) days before the date of sale, and shall be so published in one or more newspapers published or having a general circulation in the City of Jackson, Mississippi, and in one or more other newspapers or financial journals with a national circulation, to be selected by the commission.

The commission, when issuing any bonds under the authority of Sections 43-33-767 through 43-33-797, may provide that bonds, at the option of the State of Mississippi, may be called in for payment and redemption at the call price named therein and accrued interest on such date or dates named therein.

SOURCES: Laws, 1994, ch. 556, § 5, eff from and after July 1, 1994.

§ 43-33-777. Bonds are general obligations of state.

The bonds issued under the provisions of Sections 43-33-767 through 43-33-797 are general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated. All such bonds shall contain recitals on their faces substantially covering the provisions of this section.

SOURCES: Laws, 1994, ch. 556, § 6, eff from and after July 1, 1994.

§ 43-33-779. Disposition of proceeds of sale of bonds.

Upon the issuance and sale of bonds under the provisions of Sections 43-33-767 through 43-33-797, the State Bond Commission shall transfer the proceeds of any such sale or sales to the Mississippi Affordable Housing Development Fund created in Section 43-33-759. The proceeds of such bonds shall be disbursed solely upon the order of the Department of Finance and Administration under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds.

SOURCES: Laws, 1994, ch. 556, § 7, eff from and after July 1, 1994.

§ 43-33-781. Issuance of bonds.

The bonds authorized under Sections 43-33-767 through 43-33-797 may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions and things which are specified or required by Sections 43-33-767 through 43-33-797. Any resolution providing for the issuance of bonds under the provisions of Sections 43-33-767 through 43-33-797 shall become effective immediately upon its adoption by the State Bond Commission, and any such resolution may be adopted at any regular or special meeting of the commission by a majority of its members.

SOURCES: Laws, 1994, ch. 556, § 8, eff from and after July 1, 1994.

§ 43-33-783. Validation of bonds; notice.

The bonds authorized under the authority of Sections 43-33-767 through 43-33-797 may be validated in the Chancery Court of the First Judicial District of Hinds County, Mississippi, in the manner and with the force and effect provided by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds. The notice to taxpayers required by such statutes shall be published in a newspaper published or having a general circulation in the City of Jackson, Mississippi.

SOURCES: Laws, 1994, ch. 556, § 9, eff from and after July 1, 1994.

§ 43-33-785. Protection and enforcement of bond holders' rights.

Any holder of bonds issued under the provisions of Sections 43-33-767 through 43-33-797 or of any of the interest coupons pertaining thereto may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights granted under Sections 43-33-767 through 43-33-797, or under such resolution, and may enforce and compel performance of all duties required by Sections 43-33-767 through 43-33-797 to be performed, in order to provide for the payment of bonds and interest thereon.

SOURCES: Laws, 1994, ch. 556, § 10, eff from and after July 1, 1994.

§ 43-33-787. Bonds are legal investments and legal securities.

All bonds issued under the provisions of Sections 43-33-767 through 43-33-797 shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

SOURCES: Laws, 1994, ch. 556, § 11, eff from and after July 1, 1994.

§ 43-33-789. Bonds and income tax exempt.

Bonds issued under the provisions of Sections 43-33-767 through 43-33-797 and income therefrom shall be exempt from all taxation in the State of Mississippi.

SOURCES: Laws, 1994, ch. 556, § 12, eff from and after July 1, 1994.

§ 43-33-791. Use of bond proceeds.

The proceeds of the bonds issued under Sections 43-33-767 through 43-33-797 shall be used solely for the purposes herein provided, including the costs incident to the issuance and sale of such bonds.

SOURCES: Laws, 1994, ch. 556, § 13, eff from and after July 1, 1994.

§ 43-33-793. Authorization to issue warrants for payment on bonds.

The State Treasurer is authorized, without further process of law, to certify to the Department of Finance and Administration the necessity for warrants, and the Department of Finance and Administration is authorized and directed to issue such warrants, in such amounts as may be necessary to pay when due the principal of, premium, if any, and interest on, or the accredit value of, all bonds issued under Sections 43-33-767 through 43-33-797; and the State Treasurer shall forward the necessary amount to the designated place or places of payment of such bonds in ample time to discharge such bonds, or the interest thereon, on the due dates thereof.

SOURCES: Laws, 1994, ch. 556, § 14, eff from and after July 1, 1994.

§ 43-33-795. Progress report; annual fiscal reports.

The Mississippi Home Corporation shall file a report on July 1, 1995, with the Department of Finance and Administration that describes in detail the progress that has been made in implementing the projects authorized by the Mississippi Home Corporation Act. A report for each fiscal year shall be filed annually on July 1 until all funds required for the projects described in the Mississippi Home Corporation Act have been expended.

SOURCES: Laws, 1994, ch. 556, § 15, eff from and after July 1, 1994.

Cross References — Mississippi Home Corporation Act, see §§ 43-33-701 et seq.

§ 43-33-797. Sections 43-33-767 through 43-33-797 give complete authority; effect on other laws.

The provisions of Sections 43-33-767 through 43-33-797 shall be deemed to be full and complete authority for the exercise of the powers herein granted, but Sections 43-33-767 through 43-33-797 shall not be deemed to repeal or to be in derogation of any existing law of this state.

SOURCES: Laws, 1994, ch. 556, § 16, eff from and after July 1, 1994.

CHAPTER 35

Urban Renewal and Redevelopment

Article 1. Urban Renewal 43-35-1
Article 3. Slum Clearance 43-35-101
Article 5. Off-Street Parking and Business District Renewal 43-35-201
Article 7. Designation of Areas for Development and Redevelopment 43-35-301
Article 9. Community Development 43-35-501

ARTICLE 1.

URBAN RENEWAL.

SEC.
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43-35-3. Definitions.
43-35-5. Findings and declarations of necessity.
43-35-7. Encouragement of private enterprise.
43-35-9. Workable program.
43-35-11. Finding of necessity by local governing body.
43-35-13. Preparation and approval of urban renewal projects and urban renewal plans.
43-35-15. Powers.
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43-35-21. Issuance of bonds.
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43-35-27. Cooperation by public bodies.
43-35-29. Title of purchaser.
43-35-31. Exercise of powers in carrying out urban renewal project.
43-35-33. Urban renewal agency.
43-35-35. Interested public officials, commissioners or employees.
43-35-37. Urban Renewal Law as controlling.

§ 43-35-1. Short title.

This article shall be known and may be cited as the "Urban Renewal Law."

SOURCES: Codes, 1942, § 7342-01; Laws, 1958, ch. 518, § 1.

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

Housing Authorities Law, see §§ 43-33-1 et seq.

Regional housing authorities, see §§ 43-33-101 et seq.

Municipal slum clearance, see §§ 43-35-101 et seq.

Municipal off-street parking and business district renewal, see §§ 43-35-201 et seq.

Establishment of special parking facility taxing districts within urban renewal areas, see § 43-35-202.

Additional powers of municipalities and housing authorities with respect to community development, see § 43-35-503.

JUDICIAL DECISIONS

1. In general.

When a blighted area as a whole is subject to redevelopment, the condition of the condemnee's property is immaterial if the property lies within the designated project area and its acquisition is necessary to accomplish the paramount purpose of renewal. Paulk v. Housing Auth., 195 So. 2d 488 (Miss. 1967).

ATTORNEY GENERAL OPINIONS

A county may participate with a municipality within the county in a sidewalk construction project along city streets as part of a street project under this section or a public park project under § 55-9-1 or an urban renewal project under § 43-35-1 et. seq., or any other authority using monies from either the general fund or the road and bridge fund. Hollimon, June 4, 2004, A.G. Op. 03-0616.

A county may participate with a municipality within the county in a sidewalk construction project along city streets as part of a street project under § 65-7-85 or a public park project under § 55-9-1 or an urban renewal project under this article, or any other authority using monies from either the general fund or the road and bridge fund. Hollimon, June 4, 2004, A.G. Op. 03-0616.

An interlocal agreement is the appropriate means of implementing a joint sidewalk program as part of an urban renewal project. Hollimon, June 4, 2004, A.G. Op. 03-0616.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 A.L.R.2d 1414.

What constitutes "blighted area" within urban renewal and redevelopment statutes. 45 A.L.R.3d 1096.

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 1 et seq.

§ 43-35-3. Definitions.

The following terms, wherever used or referred to in this article, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(a) "Agency" or "urban renewal agency" shall mean a public agency created by Section 43-35-33 of this article.

(b) "Municipality" shall mean any incorporated city or town or county in the state.

(c) "Public body" shall mean the state or any municipality, township, village, board, commission, authority, district, or any other subdivision or public body of the state.

(d) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(e) "Mayor" shall mean the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(f) “Clerk” shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(g) “Federal government” shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(h) “Slum area” shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(i) “Blighted area” shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use. If such blighted area consists of open land the conditions contained in the proviso in subsection (d) of Section 43-35-13 shall apply. Any disaster area referred to in subsection (g) of Section 43-35-13 shall constitute a “blighted area.”

(j) “Urban renewal project” may include undertakings and activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

Such undertakings and activities may include:

(1) acquisition of a slum area or a blighted area or portion thereof;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this article in accordance with the urban renewal plan;

(4) disposition of any property acquired in the urban renewal area (including sale, initial leasing or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan;

(5) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan; and

(6) acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities.

(k) "Urban renewal area" means a slum area or a blighted area or a combination thereof which the local governing body designates as appropriate for an urban renewal project.

(*l*) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the general plan for the municipality as a whole except as provided in subsection (g) of Section 43-35-13; and (2) shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(m) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(n) "Bonds" shall mean any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures or other obligations.

(o) "Obligee" shall include any bondholder, agents or trustees for any bondholders, or lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(p) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(q) "Area of operation" shall mean the area within the corporate limits of the municipality and the area within five (5) miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city or town unless a resolution shall have been adopted by the governing body of such other city or town declaring a need therefor.

(r) "Housing authority" shall mean a housing authority created by and established pursuant to Sections 43-33-1 through 43-33-53, Mississippi Code of 1972.

(s) "Board" or "commission" shall mean a board, commission, department, division, office, body or other unit of the municipality.

(t) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

SOURCES: Codes, 1942, § 7342-18; Laws, 1958, ch. 518, § 18.

ATTORNEY GENERAL OPINIONS

A county may not issue bonds or use bond proceeds to equip or retrofit equipment for a facility located in another county. Clements, Apr. 6, 2001, A.G. Op. #01-0160.

When subsection (b) of this section and §§ 43-35-5 and 43-5-15 are read in pari materia, a county has the authority to expend general funds in furtherance of the exercise of lawful powers in an urban renewal project. Hollimon, June 4, 2004, A.G. Op. 03-0616.

§ 43-35-5. Findings and declarations of necessity.

It is hereby found and declared that there exist in municipalities of the state slum and blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this article, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this article, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that salvable slum and blighted areas can be conserved and rehabilitated through appropriate public action as authorized in this article, and the cooperation and voluntary action of the owners and tenants of property in such areas.

It is further found and declared that the powers conferred by this article are for public uses and purposes for which public money may be expended and the power of eminent domain and police power exercised. The necessity in the public interest for the provisions enacted as this article is hereby declared as a matter of legislative determination.

SOURCES: Codes, 1942, § 7342-02; Laws, 1958, ch. 518, § 2.

Cross References — Municipal slum clearance, see §§ 43-35-101 et seq.

JUDICIAL DECISIONS

1. In general.

The burden of proof on the issue of necessity is on the landowner who seeks to show lack of necessity, and whether the taking is necessary is within the discretion of the condemnor, and the courts will interfere with the exercise of such discretion only when abuse of discretion or fraud is shown, and in the absence of such proof a housing authority's declaration of necessity will not be overturned. Paulk v. Housing Auth., 195 So. 2d 488 (Miss. 1967).

ATTORNEY GENERAL OPINIONS

When this section and §§ 43-35-3(b) and 43-5-15 are read in pari materia, a county has the authority to expend general funds in furtherance of the exercise of lawful powers in an urban renewal project. Hollimon, June 4, 2004, A.G. Op. 03-0616.

RESEARCH REFERENCES

Am Jur. 13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 1 (complaint in federal court — class action — by residents in slum clearance area to enjoin displacement until adequate relocation facilities provided); Form 6 (answer — in action to enjoin slum clearance project — finding of special commission established property as slum area subject to clearance and redevelopment); Forms 8, 9 (findings of fact — in connection with proposed slum clearance and urban redevelopment project).

1 Am. Jur. Proof of Facts 2d, Blighted Area, §§ 5 et seq. (proof of "blighted" condition of urban area).

§ 43-35-7. Encouragement of private enterprise.

A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this article, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this article, including the formulation of a workable program, the approval of urban renewal plans (consistent with the general plan of the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

SOURCES: Codes, 1942, § 7342-03; Laws, 1958, ch. 518, § 3.

Cross References — General powers of municipalities, see §§ 21-17-1 et seq. Municipal slum clearance, see §§ 43-35-101 et seq.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 A.L.R.2d 1414.

Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

§ 43-35-9. Workable program.

A municipality for the purposes of this article may formulate for the municipality a workable program for utilizing appropriate private and public resources to eliminate and prevent the development or spread of slums and urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of slum and blighted areas, or to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for: the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning and occupancy controls and standards; the rehabilitation or conservation of slum and blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of slum and blighted areas or portions thereof.

SOURCES: Codes, 1942, § 7342-04; Laws, 1958, ch. 518, § 4.

Cross References — Municipal slum clearance, see §§ 43-35-101 et seq.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 16 et seq.

§ 43-35-11. Finding of necessity by local governing body.

No municipalities shall exercise the authority hereafter conferred upon municipalities by this article until after its local governing body shall have adopted a resolution finding that: (1) one or more slum or blighted areas exist in such municipality; and (2) the rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality.

SOURCES: Codes, 1942, § 7342-05; Laws, 1958, ch. 518, § 5; Laws, 1962, ch. 558; Laws, 1980, ch. 441, § 4, eff from and after passage (approved May 2, 1980).

Cross References — Provision that the urban renewal agency shall not transact any business or exercise its powers until or unless the local governing body has made the finding prescribed in § 43-35-11, see § 43-35-33.

§ 43-35-13. Preparation and approval of urban renewal projects and urban renewal plans.

(a) A municipality shall not approve an urban renewal project for an urban renewal area unless the governing body has, by resolution, determined such area to be a slum area or a blighted area or a combination thereof and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project in accordance with subsection (d) hereof.

(b) The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to a municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty (30) days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said thirty (30) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal project, after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project if it finds that (1) a feasible method exists for the location of families who will be displaced from the urban renewal area in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families; (2) the urban renewal plan conforms to the general plan of the municipality as a whole; and (3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise. If the urban renewal area consists of an area of open land to be acquired by the municipality, such area shall not be so acquired unless (1) if it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design which is decent, safe and sanitary exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas (including other portions of the urban renewal area); that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality, or (2) if it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives, which acquisition may require the exercise of governmental action, as provided in this article, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

(e) An urban renewal plan may be modified at any time, provided that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the municipality may deem advisable and in any event shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

(f) Upon the approval by a municipality of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area and the municipality may then cause such plan or modification to be carried out in accordance with its terms.

(g) Notwithstanding any other provisions of this article, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under Public Law 875, Eighty-first Congress, or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection (d) of this section and the provisions of this section requiring a general plan for the municipality and a public hearing on the urban renewal project.

SOURCES: Codes, 1942, § 7342-06; Laws, 1958, ch. 518, § 6.

Cross References — Provision of Tax Increment Financing Act to effect that redevelopment plans shall be approved in the same manner and at the same times provided in this section for the approval of urban renewal plans, see § 21-45-21.

JUDICIAL DECISIONS

1. In general.

Where at the time of a municipal housing authority's resolution declaring the necessity for taking certain properties as a blighted area, such area was populated and had houses and commercial buildings constructed thereon, the fact that at the time eminent domain proceedings were commenced there was nothing standing in the area except grass and trees, such proceedings were not violative of the statute prohibiting condemnation of "open land," since the condition of the area was otherwise at the time that the declaration of necessity for taking was adopted. Paulk v. Housing Auth., 195 So. 2d 488 (Miss. 1967).

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 19 et seq.

§ 43-35-15. Powers.

Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this article, and to disseminate slum clearance and urban renewal information;

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, or services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(c) Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property (or personal property for its administrative purposes), together with any improvements thereon. However, before condemning property of a corporation itself possessing the power of eminent domain, the condemnor must have obtained from the Mississippi Public Service Commission findings of fact as follows: (i) that there was no other property reasonably available for the contemplated public use, and (ii) that the property sought to be taken was not reasonably necessary to the performance of the function of the public service corporation owning, or holding such property. Moreover, such municipality shall have the power to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this article. However, no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising the powers hereunder, in the exercise of such functions with respect to an urban renewal project, unless the legislature shall specifically so state;

(d) To invest any urban renewal project funds held in reserves or sinking funds or any such funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to Section 43-35-21 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled;

(e) To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this article, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A municipality may include in any contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this article.

(f) To accept funds under the provisions of the Housing and Community Development Act of 1974, P. L. 93-383, or amendments thereto, and to make grants or loans to individuals who own property in the designated area and who qualify according to the provisions of the act, such grants or loans to be made from funds accepted under the provisions of said P. L. 93-383, as amended, or from the grants and contributions derived under the provisions of subsection (e) of this section; and to make loans from funds derived from subsection (e) of this section or from the proceeds of revenue bonds issued pursuant to the authority of Section 43-35-21, Mississippi Code of 1972.

(g) Within its area of operation, to make or have made all surveys and plans necessary to the carrying out of the purposes of this article and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans. Such plans may include, without limitation: (i) a general plan for the locality as a whole, (ii) urban renewal plans, (iii) preliminary plans outlining urban renewal activities for neighborhoods to embrace two (2) or more urban renewal areas, (iv) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (v) plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (vi) appraisals, title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and to apply for, accept and utilize grants of funds from the federal government for such purposes;

(h) To prepare plans for the relocation of persons (including families, business concerns and others) displaced by an urban renewal project, and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of payments financed by the federal government;

(i) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this article and to levy taxes and assessments for such purposes; to zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements with a housing authority or an urban renewal agency vested with urban renewal project powers under Section 43-35-31 (which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary), respecting action to be taken by such municipality pursuant to any of the powers granted by this article;

(j) To close, vacate, plan or replan streets, roads, sidewalks, ways or other places; and to plan or replan any part of the municipality;

(k) Within its area of operation, to organize, coordinate and direct the administration of the provisions of this article as they apply to such municipality in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively; and

(*l*) To exercise all or any part or combination of powers herein granted.

SOURCES: Codes, 1942, § 7342-07; Laws, 1958, ch. 518, § 7; Laws, 1975, ch. 499, eff from and after passage (approved April 7, 1975).

Cross References — General powers of municipalities, see §§ 21-17-1 et seq.

Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

Additional powers of municipalities and housing authorities with respect to community development, see § 43-35-503.

Federal Aspects — Housing and Community Development Act of 1974 (Public Law 93-383) is codified as 42 USCS §§ 5301 et seq.

ATTORNEY GENERAL OPINIONS

When this section and §§ 43-35-3(b) and 43-5-5 are read in pari materia, a county has the authority to expend general funds in furtherance of the exercise of lawful powers in an urban renewal project. Hollimon, June 4, 2004, A.G. Op. 03-0616.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 A.L.R.2d 1414.

Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 10 et seq.

§ 43-35-17. Eminent domain.

(a) A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this article. A municipality may exercise the power of eminent domain in the manner provided in Chapter 27, Title 11, Mississippi Code of 1972, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the state, or any political subdivision thereof, may be acquired without its consent.

(b) In any proceeding to fix or assess compensation for damages for the taking or damaging of property, or any interest therein, through the exercise of the power of eminent domain or condemnation, evidence or testimony bearing upon the following matters shall be admissible and shall be considered in fixing such compensation or damages, in addition to evidence or testimony otherwise admissible:

(1) Any use, condition, occupancy, or operation of such property, which is unlawful or violative of, or subject to elimination, abatement, prohibition, or correction under, any law or any ordinance or regulatory measure of the state, county, municipality, other political subdivision, or any agency thereof, in which such property is located, as being unsafe, substandard, unsanitary or otherwise contrary to the public health, safety, or welfare; and

(2) The effect on the value of such property of any such use, condition, occupancy, or operation, or of the elimination, abatement, prohibition, or correction of any such use, condition, occupancy, or operation.

(c) The foregoing testimony and evidence shall be admissible notwithstanding that no action has been taken by any public body or public officer toward the abatement, prohibition, elimination or correction of any such use, condition, occupancy, or operation. Testimony or evidence that any public body or public officer charged with the duty or authority so to do has rendered, made or issued any judgment, decree, determination or order for the abatement, prohibition, elimination or correction of any such use, condition, occupancy, or operation shall be admissible and shall be prima facie evidence of the existence and character of such use, condition or operation.

SOURCES: Codes, 1942, § 7342-08; Laws, 1958, ch. 518, § 8.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the second sentence of (a) by substituting "Chapter 27, Title 11, Mississippi Code of 1972" for "Chapter 33, Title 11, Mississippi Code of 1972." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Constitutional provision governing the taking of private property, see Miss. Const. Art. 3, § 17.

Right of eminent domain, generally, see §§ 11-27-1 et seq.

Exercise of right of eminent domain by housing authorities, generally, see § 43-33-19.

JUDICIAL DECISIONS

1. In general.

In an action by heirs against a city alleging violations of the reservations and restrictions of a deed whereby the grantor conveyed certain property to the city, for no consideration, but with the main restriction and reservation that the property be used as a park, the city's motions to dismiss, or for summary judgment under Fed. R. Civ. P. 56(c), were granted where the city did not materially violate its duty as trustee with regard to the park because the city had continuously expended money to achieve and maintain a park which was unquestionably of the type envisioned by the grantor, and, as to the objected to highway extension, the city entered into a temporary construction agreement, not subject to restrictions under Miss. Code Ann. § 43-35-17, whereby the state improved the existing street in order to maximize the public's use and enjoyment of activities both on the deeded property and similar private and public development adjacent thereto. Shawnee Partners, LLC. v. City of Gulfport, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 26357 (S.D. Miss. Feb. 20, 2002), affirmed by 67 Fed. Appx. 252, 2003 U.S. App. LEXIS 10536 (5th Cir. Miss. 2003).

ATTORNEY GENERAL OPINIONS

A City may acquire a house included on the National Register and then sell the property to a buyer in the private sector for redevelopment/ownership as a part of an urban renewal project if the City follows the proper procedures. The City also has the option of acquiring the property by eminent domain if the governing authorities follow the procedures set forth in Section 43-35-17. Polk, May 24, 1996, A.G. Op. #96-0319.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 A.L.R.2d 1414.

Am Jur. 26 Am. Jur. 2d, Eminent Domain §§ 78 et seq.

40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 19 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 7 (defense — in eminent domain proceedings to acquire property for urban redevelopment — lack of evidence to support finding that area is blighted).

10 Am. Jur. Proof of Facts 2d, Eminent Domain: Lack of Necessity for Taking Property, §§ 9 et seq. (proof of lack of reasonable necessity for taking property for urban renewal project).

CJS. 29A C.J.S., Eminent Domain § 25.

§ 43-35-19. Disposal of property in urban renewal area.

(a) A municipality may sell, lease or otherwise transfer real property or any interest therein acquired by it, and may enter into contracts with respect thereto, in an urban renewal area for residential, recreational, commercial, industrial or other uses or for public use, or may retain such property or interest for public use, in accordance with the urban renewal plan, subject to such covenants, conditions and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas or to otherwise carry out the purposes of this article. Such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the uses provided in such plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any or all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban renewal plan. Each contract for such transfer and the urban renewal plan shall be recorded in the land records of the county in such manner as to afford actual or constructive notice thereof.

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality may, by public notice by publication in a newspaper having a general circulation in the community (thirty (30) days prior to the execution of any contract to sell, lease or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section), invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that proposals shall be made by those interested within thirty (30) days after the date of publication of said notice, and that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out, and may negotiate with any persons for proposals for the purchase, lease or other transfer of any real property acquired by the municipality in the urban renewal area. The municipality may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this article. A notification of intention to accept such proposal shall be filed with the governing body not less than thirty (30) days prior to any such acceptance. Thereafter, the municipality may execute such contract in accordance with the provisions of subsection (a) and deliver deeds, leases and other instruments and take all steps necessary to effectuate such contract.

(c) A municipality may temporarily operate and maintain real property acquired in an urban renewal area pending the disposition of the property as authorized in this article, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan.

SOURCES: Codes, 1942, § 7342-09; Laws, 1958, ch. 518, § 9.

JUDICIAL DECISIONS

1. In general.

The evidence was sufficient to support a trial court's dismissal of a city's condemnation petition based on a finding of no public use where the city's contract with a gaming corporation for use of the land for the alleged purpose of urban renewal did not comply with § 43-35-19(b)'s competitive bidding requirement, and the city failed to provide conditions, restrictions, or covenants in its contract with the gaming corporation to ensure that the property would be used for the purpose of gaming enterprise or other related establishments. Mayor of Vicksburg v. Thomas, 645 So. 2d 940 (Miss. 1994).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 A.L.R.2d 1414.

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment § 23.

13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 29 (judgment or decree — enjoining transfer of realty acquired by housing authority to private or military interests).

§ 43-35-21. Issuance of bonds.

(a) A municipality shall have power to issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project under this article, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects under this article. Payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this article, and by a mortgage of any such urban renewal projects, or any part thereof title to which is in the municipality.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this article are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, not to exceed thirty (30) years from date of issue, bear interest at such rate or rates, not exceeding that allowed in Section 75-17-103, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto. Any bond issue to be awarded and sold to the United States of America or any agency thereof shall mature at such time or times, not to exceed thirty-five (35) years, as shall be prescribed in the ordinance authorizing their issuance.

(d) Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality may determine, may be exchanged for other bonds on the basis of par or may be sold at private sale under such terms and conditions as may be determined from time to time by the municipality. Such bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this article shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable.

(f) In any suit, action or proceeding involving the validity or enforceability of any bond issued under this article, or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this article.

SOURCES: Codes, 1942, § 7342-10; Laws, 1958, ch. 518, § 10; Laws, 1974, ch. 358, § 1; Laws, 1980, ch. 434; Laws, 1981, ch. 520, § 1; Laws, 1982, ch. 434, § 23; Laws, 1983, ch. 541, § 28; Laws, 2011, ch. 455, § 1, eff from and after passage (approved Mar. 29, 2011.)

Cross References — Issuance of bonds by housing authorities, see § 43-33-23.

Issuance of bonds for development and redevelopment of designated areas, see § 43-35-313.

RESEARCH REFERENCES

ALR. Payment of attorneys' services in defending action brought against officials individually as within power or obligation of public body. 47 A.L.R.5th 553.

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment § 3, 4, 31.

§ 43-35-23. Bonds as legal investments.

All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this article or by any urban renewal agency or housing authority vested with urban renewal project powers under Section 43-35-31. Such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys, under the terms of said agreement, are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

SOURCES: Codes, 1942, § 7342-11; Laws, 1958, ch. 518, § 11.

Cross References — Housing bonds as legal investments, see § 43-33-39.

Investments and loans by savings and loan associations, see §§ 81-12-155 through 81-12-173.

Powers of banks to manage and invest trust funds, see § 81-5-33.

Investments by credit unions, see § 81-13-11.

Legal investments for insurance companies, see § 83-19-51.

Investment of trust funds by trustees, guardians and other fiduciaries, see §§ 91-13-1 et seq.

§ 43-35-25. Property exempt from taxes and from levy and sale by virtue of an execution.

(a) All property of a municipality including funds, owned or held by it for the purposes of this article shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property. The provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this article by a municipality on its rents, fees, grants or revenues from urban renewal projects.

(b) The property of a municipality, acquired or held for the purposes of this article, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state or any political subdivision thereof. Such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

SOURCES: Codes, 1942, § 7342-12; Laws, 1958, ch. 518, § 12.

Cross References — Tax exemptions, generally, see §§ 27-31-1 et seq.
Property exempt from execution, see § 85-3-1.

RESEARCH REFERENCES

ALR. Rights in respect of real estate taxes where property is taken in eminent domain. 45 A.L.R.2d 522.

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 26 et seq.

§ 43-35-27. Cooperation by public bodies.

(a) For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other rights or privileges therein to a municipality; (2) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section; (3) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan; (4) lend, grant or contribute funds to a municipality; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this article, including the furnishing of funds or other assistance in connection with an urban renewal project; and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places; plan or replan, zone or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, other than the municipality, which is authorized by law to engage in the undertaking, carrying out, or administration of urban renewal projects (including any agency or instrumentality of the United States of America), the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the term "municipality" shall also include an urban renewal agency or a housing authority vested with all of the urban renewal project powers pursuant to the provisions of Section 43-35-31.

(b) Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

(c) For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of an urban renewal agency or a housing authority hereunder, a municipality may (in addition to its other powers and upon such terms, with or without consideration, as it may determine) do and perform any or all of the actions or things which, by the provisions of subsection (a) of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

(d) For the purposes of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, such municipality may (in addition to any authority to issue bonds pursuant to Section 43-35-21) issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

SOURCES: Codes, 1942, § 7342-13; Laws, 1958, ch. 518, § 13.

ATTORNEY GENERAL OPINIONS

The Secretary of State was authorized to convey certain properties to redevelopment authority following the execution by the owners of the properties (or the parties which, but for tax sales, would have been the owners of the properties) of a waiver of any rights to challenge the Secretary of State's title to the properties and any claim to a refund from the county. Mott, Jr., May 17, 2002, A.G. Op. #02-0243.

If an urban renewal project is for road or bridge work, a county has the authority to expend road and bridge funds for that purpose. Hollimon, June 4, 2004, A.G. Op. 03-0616.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment § 13.

§ 43-35-29. Title of purchaser.

Any instrument executed by a municipality and purporting to convey any right, title or interest in any property under this article shall be conclusively presumed to have been executed in compliance with the provisions of this article in so far as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned.

SOURCES: Codes, 1942, § 7342-14; Laws, 1958, ch. 518, § 14.

§ 43-35-31. Exercise of powers in carrying out urban renewal project.

(a) A municipality may itself exercise its urban renewal project powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency (created by Section 43-35-33) or by the housing authority, if one exists or is subsequently established in the community. In the event the local governing body makes such determination, the urban renewal agency or the housing authority, as the case may be, shall be vested with all of the urban renewal project powers in the same manner as though all such powers were conferred on such agency or authority instead of the municipality. If the local governing body does not elect to make such determination, the municipality, in its discretion, may exercise its urban renewal project powers through a board or commissioner or through such officers of the municipality as the local governing body may by resolution determine.

(b) As used in this section, the term "urban renewal project powers" shall include the rights, powers, functions and duties of a municipality under this article, except the following: the power to determine an area to be a slum or blighted area or combination thereof and to designate such area as appropriate for an urban renewal project and to hold any public hearings required with respect thereto; the power to approve urban renewal plans and modifications thereof; the power to establish a general plan for the locality as a whole; the power to formulate a workable program under Section 43-35-9; the power to make the determinations and findings provided for in Section 43-35-7, Section 43-35-11, and subsection (d) of Section 43-35-13; the power to issue general obligation bonds; and the power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in subsection (h) of Section 43-35-15.

SOURCES: Codes, 1942, § 7342-15; Laws, 1958, ch. 518, § 15.

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

Provision that the urban renewal agency shall not transact any business or exercise its powers until or unless the local governing body has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in § 43-35-31, see § 43-35-33.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 A.L.R.2d 1414.

Am Jur. 13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:137 (resolution designating urban renewal redeveloper).

§ 43-35-33. Urban renewal agency.

(a) There is hereby created in each municipality a public body corporate and politic to be known as the "urban renewal agency" of the municipality. Such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the finding prescribed in Section 43-35-11, and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in Section 43-35-31.

(b) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of five (5) commissioners. The term of office of each such commissioner shall be for five (5) years. The commissioners who are appointed in 1973 shall be designated to serve for terms of one (1), two (2), three (3), four (4) and five (5) years, respectively, from the date of their appointment, and thereafter when a vacancy shall occur either by the expiration of term of office or otherwise, the vacancy shall be filled by the governing body of the city either to fill an unexpired term where a commissioner shall die or resign or shall become disqualified during his term, or for a full term of five (5) years where the term of a commissioner expires.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which shall be coterminous with the area of operation of the municipality, and are otherwise eligible for such appointments under this article.

An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this article shall file with the local governing body, on or before March 31 of each year, a report of its activities for its preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of such fiscal year. At the time of filing the report, the agency shall publish a true and correct copy of such report in a newspaper of general circulation in the community.

(d) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearing and have had an opportunity to be heard in person or by counsel.

SOURCES: Codes, 1942, § 7342-16; Laws, 1958, ch. 518, § 6; Laws, 1973, ch. 315, § 1; Laws, 1985, ch. 371, eff from and after passage (approved March 20, 1985).

Cross References — Housing authorities, see § 43-33-5.

Regional housing authorities, see § 43-33-103.

Municipal off-street parking and business district renewal, see §§ 43-35-201 et seq.

Appointment of additional members to board of urban renewal agency, see § 43-35-235.

JUDICIAL DECISIONS

1. In general.

The Jackson Redevelopment Agency was a legal entity entitled to exercise the power of eminent domain, even though it had failed to file the required annual reports; the fact that two of the seven commissioners of the redevelopment agency were not qualified to serve on the board of directors because they did not meet the statutory residence requirements did not invalidate the agency's exercise of its eminent domain powers where, under § 25-1-37, their right to office could not be impeached in a collateral proceeding; nor could a collateral proceeding be used to raise a claim that two of the commissioners had improperly failed to file statements regarding conflicts of interest and that three other commissioners were not qualified because they held other public office; however, the agency's action in condemning the property at issue was invalid under § 43-35-33 since a quorum of the commissioners was not present when the resolution to exercise the power of eminent domain was adopted. Jackson Redevelopment Auth. v. King, Inc., 364 So. 2d 1104 (Miss. 1978).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 A.L.R.2d 1414.

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 10 et seq.

CJS. 62 C.J.S., Municipal Corporations § 920.

§ 43-35-35. Interested public officials, commissioners or employees.

No public official or employee of a municipality, or of any board or commission thereof who exercises any authority with respect to urban renewal projects undertaken pursuant to this article, and no commissioner or employee of a housing authority or urban renewal agency which has been vested by a municipality with urban renewal project powers under Section 43-35-31 shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, commissioner or employee shall not participate in any action by the municipality, or board or commission thereof, housing authority, or urban renewal agency affecting such property. Any disclosure required to be made by this section to the local governing body shall concurrently be made to a housing authority or urban renewal agency which has been vested with urban renewal project powers by the municipality pursuant to the provisions of Section 43-35-31. No commissioner or other officer of any housing authority, urban renewal agency, board or commission exercising powers pursuant to this article shall hold any other public office under the municipality other than his commissionership or office with respect to such housing authority, urban renewal agency, board or commission. Any violation of the provisions of this section shall constitute misconduct in office.

SOURCES: Codes, 1942, § 7342-17; Laws, 1958, ch. 518, § 17; Laws, 1979, ch. 410, eff from and after July 1, 1979.

Cross References — Constitutional prohibition against public officer's interest in public contracts, see Miss. Const. Art. 4, §§ 107 and 109.

Conflict interest; improper use of office, see §§ 25-4-101 et seq.

JUDICIAL DECISIONS

1. In general.

The Jackson Redevelopment Agency was a legal entity entitled to exercise the power of eminent domain, even though it had failed to file the required annual reports; the fact that two of the seven commissioners of the redevelopment agency were not qualified to serve on the board of directors because they did not meet the statutory residence requirements did not invalidate the agency's exercise of its eminent domain powers where, under § 25-1-37, their right to office could not be impeached in a collateral proceeding; nor could a collateral proceeding be used to raise a claim that two of the commissioners had improperly failed to file statements regarding conflicts of interest and that three other commissioners were not qualified because they held other public office; however, the agency's action in condemning the property at issue was invalid under § 43-35-33 since a quorum of the commissioners was not present when the resolution to exercise the power of eminent domain was adopted. Jackson Redevelopment Auth. v. King, Inc., 364 So. 2d 1104 (Miss. 1978).

§ 43-35-37. Urban Renewal Law as controlling.

In so far as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling. The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this article shall be construed to amend, repeal or supersede the provisions of the Public Utility Law of 1956, Sections 77-3-1 through 77-3-89, Mississippi Code of 1972, nor to authorize the construction or operation of utility facilities where reasonably adequate services are being provided by an existing utility. Nothing contained in this article shall be construed to authorize the taking of private property for any purpose other than necessary public use.

SOURCES: Codes, 1942, § 7342-19; Laws, 1958, ch. 518, § 19.

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

ARTICLE 3.

SLUM CLEARANCE.

SEC.
43-35-101. Definitions.
43-35-103. Slum clearance authorized.
43-35-105. Ordinances; administrative officer; condemnation proceedings.
43-35-107. Unsafe buildings.
43-35-109. Service of complaints.
43-35-111. Restraining order; hearing.
43-35-113. Powers of administrative officer.
43-35-115. Estimate of costs.
43-35-117. Construction of law.

§ 43-35-101. Definitions.

The following terms, whenever used or referred to in this article, shall have the following respective meanings for the purposes of this article, unless a different meaning clearly appears from the context:

(a) "Municipality" shall mean any city, town or village in this state.

(b) "Governing body" shall mean the board of aldermen, council, board, or commissioners, or other legislative body, charged with governing a municipality.

(c) "Public officer" shall mean the officer or officers in charge of any municipal department who are authorized by ordinance adopted hereunder to exercise the powers prescribed by such ordinance and by this article.

(d) "Public authority" shall mean any housing authority, or any officer who is in charge of any department or branch of the government of the municipality or state relating to health, fire, building regulations, or to other activities concerning buildings in the municipality.

(e) "Owner" shall mean the holder of the title in fee, or a mortgagee or trustee, whose interest is shown of record, or who is in possession of a building, or any person in control of a building, or the agent of any such person.

(f) "Parties in interest" shall mean individuals, associations, or corporations who have an interest of record in or who are in possession of a building.

(g) "Building" means any building or structure or part thereof used and occupied by humans as a dwelling, store, factory, warehouse, requiring the presence of humans therein, or intended to be so used, and includes any yard, garden, parking or storage area, outhouses, and appurtenances belonging thereto or usually enjoyed therewith.

SOURCES: Codes, 1942, § 3508; Laws, 1938, ch. 337, § 8; Laws, 1958, ch. 525, § 6.

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

Housing Authorities Law, see §§ 43-33-1 et seq.

Regional housing authorities, see §§ 43-33-101 et seq.

Urban renewal, see §§ 43-35-1 et seq.

§ 43-35-103. Slum clearance authorized.

It is hereby found and declared that the existence and occupation of dwellings and other buildings in the municipalities of this state, which are unfit for human habitation, use or occupancy, are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people of this state; and that a public necessity exists for the repair or elimination of such buildings.

Whenever any municipality of this state finds that there exist in such municipality buildings, which are unfit for human habitation, use or occupancy, due to dilapidation, defects increasing the hazards of fires, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such buildings unsafe and unsanitary, and dangerous or detrimental to the health, safety or morals, or which are otherwise inimical to the welfare of the residents of such municipality, power is hereby conferred upon such municipality to exercise its police powers to remedy or eliminate the aforesaid conditions in the manner provided in this article.

SOURCES: Codes, 1942, § 3501; Laws, 1938, ch. 337, § 1; Laws, 1958, ch. 525, § 1.

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

Housing Authorities Law, see §§ 43-33-1 et seq.

Regional housing authorities, see §§ 43-33-101 et seq.

Urban renewal, see §§ 43-35-1 et seq.

RESEARCH REFERENCES

ALR. Suability, and liability, for torts, of public housing authority. 61 A.L.R.2d 1246.

Am Jur. 13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Forms 8, 9 (findings of fact — in connection with proposed slum clearance and urban redevelopment project).

1 Am. Jur. Proof of Facts 2d, Blighted Area, §§ 5 et seq. (proof of "blighted" condition of urban area).

§ 43-35-105. Ordinances; administrative officer; condemnation proceedings.

Upon the adoption of an ordinance finding that building conditions of the character described in Section 43-35-103 exist within a municipality, the governing body of such municipality is hereby authorized to adopt ordinances relating to the buildings within such municipality which are unfit for human habitation, use or occupancy. Such ordinances shall include the following provisions:

(a) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.

(b) That whenever a petition is filed with the public officer by a public authority or by at least five (5) residents of the municipality, charging that any building is unfit for human habitation, use or occupancy, or whenever it appears to the public officer, on his own motion, that any building is unfit for human habitation, use or occupancy, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such premises a complaint, stating the charges in that respect and containing a notice that a hearing will be held before the public officer, or his designated agent, at a place therein fixed not less than ten (10) days nor more than thirty (30) days after the serving of said complaint; and that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint.

(c) That if, after such notice and hearing, the public officer determines that the building under consideration is unfit for human habitation, use or occupancy, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order requiring him, to the extent and within the time specified in the order, to repair, alter or improve the said building to render it fit for human habitation, use or occupancy or, at the option of the owner, to vacate and close the building as a human habitation, or for human use or occupancy.

(d) That, if the owner fails to comply with such order within the time prescribed, the public officer may cause the building to be vacated and closed; that the public officer may cause to be posted on the main entrance of any building so closed a placard with the following words:

"This building is unfit for human habitation, use or occupancy; the use or occupation of this building by humans is prohibited and unlawful."

Any person who shall rent, lease or occupy, or who shall permit any person to rent, lease or occupy such building for a human habitation, use or occupancy, shall be liable for such fine as may be prescribed by the ordinances of the municipality.

(e) That if, after notice and hearing, the public officer determines that a building is in such condition, because of dilapidation, disrepair, structural defects, or otherwise, that it is dangerous or injurious to the health or safety of the public or the occupants of buildings or the occupants of neighboring buildings, said public officer shall issue and cause to be served upon the owner an order requiring him to repair, alter or improve the said building to the extent and within the time specified in such order, or, at the option of the owner, to remove or demolish such building; that if the owner fails to comply with such order within the time prescribed, the public officer may cause such building to be repaired, altered or improved in accordance with the order. If such repairs, alterations or improvements cannot be made at a reasonable cost in relation to the value of the building, said public officer may cause such building to be removed or demolished; the ordinance of the municipality may fix a certain percentage of such cost in relation to the value of a building as being reasonable for such purpose; and the cost of such repairs, alterations, improvements or removal, or demolition, in addition to a penalty not to exceed twenty percent (20%) of the actual costs which may be imposed by the municipality, shall be a lien against such real estate, and assessed and collected as a special tax. The governing authorities of any municipality ordering such assessment shall fix a day for the hearing of objections to such assessment and shall cause the municipal clerk to give to the property owner ten (10) days' written notice, by mail, if the post-office address of the owner be known, but if the post-office address of the owner be unknown, notice shall be given by posting notice for at least ten (10) days in five (5) public places in the municipality, of the time and place for the hearing of objections to such assessment; one of such public places for posting notice as aforesaid shall be on the land which is the subject matter of such assessment. If the amount of said special tax is not paid in full within six (6) months from and after the date the assessment becomes final, the tax collector shall proceed to advertise and sell the said real estate, or a sufficient amount thereof to recover said special tax and all costs of the sale, after having given notice of the time and place of such sale as is required by law for the sale of land for delinquent ad valorem taxes. From the proceeds of said sale, the tax collector shall first pay the cost of the sale, after which he shall pay the cost of such repairs, alterations, improvement, removal or demolition and any penalty imposed by the municipality; and any amount remaining over shall be deposited by him with the clerk of the circuit court as hereinafter provided. If the building is removed or demolished by the public officer, he may sell the materials of such building and shall credit the proceeds of such sale against the cost of the removal or demolition; and any balance remaining shall be deposited in the circuit court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by the final award or judgment of such court. Nothing in this subsection shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

SOURCES: Codes, 1942, § 3502; Laws, 1938, ch. 337, § 2; Laws, 1958, ch. 525, § 2; Laws, 1990, ch. 529, § 1, eff from and after passage (approved April 2, 1990).

ATTORNEY GENERAL OPINIONS

A municipality may not extinguish a lien obtained in connection with cleaning/removal assessments even if the property is acquired by and the purposes of Habitat for Humanity. Horne, March 27, 1998, A.G. Op. #98-0089.

A municipality operating under the authority of this section would be allowed to clean 16th Section land, place a lien upon the property for that cleaning, and sell the lessee's interest in the land to satisfy the lien. Baker, Dec. 5, 2003, A.G. Op. 03-0650.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Eminent Domain §§ 78 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 7 (defense — in eminent domain proceedings to acquire property for urban redevelopment — lack of evidence to support finding that area is blighted).

CJS. 29A C.J.S., Eminent Domain § 25.

§ 43-35-107. Unsafe buildings.

An ordinance adopted by a municipality under this article shall provide that the public officer may determine that a building is unfit for human habitation, use or occupation, if he finds that conditions exist in such buildings which are dangerous or injurious to the health, safety or morals of the persons using such buildings for human habitation, use or occupation, or to the public. Such conditions may include the following, without limiting the generality of the foregoing: defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanliness. Such ordinance may provide additional standards to guide the public officer, or his agents, in determining the fitness of a building for human habitation, use or occupation.

SOURCES: Codes, 1942, § 3503; Laws, 1938, ch. 337, § 3; Laws, 1958, ch. 525, § 3.

ATTORNEY GENERAL OPINIONS

A municipality may not extinguish a lien obtained in connection with cleaning/removal assessments even if the property is acquired by and the purposes of Habitat for Humanity. Horne, March 27, 1998, A.G. Op. #98-0089.

§ 43-35-109. Service of complaints.

Complaints or orders issued by a public officer pursuant to an ordinance adopted under this article shall be served upon persons either personally or by registered mail; but if the whereabouts of such persons is unknown, and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) successive weeks in a newspaper printed and published in the municipality, or, in the absence of such a newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order. A copy of such complaint or order shall also be filed in the proper office or offices for the filing of lis pendens notices in the county in which the dwelling is located, and such filing of the complaint shall have the same force and effect as other lis pendens notices provided by law. The rules and evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

SOURCES: Codes, 1942, § 3504; Laws, 1938, ch. 337, § 4.

ATTORNEY GENERAL OPINIONS

A municipality may not extinguish a lien obtained in connection with cleaning/removal assessments even if the property is acquired by and the purposes of Habitat for Humanity. Horne, March 27, 1998, A.G. Op. #98-0089.

§ 43-35-111. Restraining order; hearing.

Any person affected by an order issued by the public officer may apply to the circuit court for an injunction restraining the public officer from carrying out the provisions of the order, and the court, or any judge thereof, may, upon such application, issue an order restraining the public officer pending final disposition of the cause. Hearings shall be had by the court on such applications within twenty (20) days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised, and shall enter such final order or decree as law and justice may require. In all such proceedings, the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the discretion of the court. The remedies herein provided shall be exclusive remedies, and no person affected by an order of the public officer shall be entitled to recover any damages for action taken by the public officer under such order or because of non-compliance therewith.

SOURCES: Codes, 1942, § 3505; Laws, 1938, ch. 337, § 5.

Cross References — Injunctions, generally, see §§ 11-13-1 et seq.

RESEARCH REFERENCES

Am Jur. 13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 1 (complaint in federal court — class action — by residents in slum clearance area to enjoin displacement until adequate relocation facilities provided); Form 6 (answer — in action to enjoin slum clearance project — finding of special commission established property as slum area subject to clearance and redevelopment).

§ 43-35-113. Powers of administrative officer.

An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers, in addition to others herein granted:

(a) To investigate the building conditions in the municipality in order to determine which buildings therein are unfit for human habitation, use or occupation;

(b) To administer oaths, affirmations, examine witnesses, and receive evidence;

(c) To enter upon premises for the purpose of making examinations, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(d) To appoint and fix the duties of such officers, agents and employees, as he deems necessary to carry out the purposes of the ordinance; and,

(e) To delegate any of his functions and powers under the ordinance to such officers and agents as he may designate.

SOURCES: Codes, 1942, § 3506; Laws, 1938, ch. 337, § 6; Laws, 1958, ch. 525, § 4.

§ 43-35-115. Estimate of costs.

The governing body of any municipality adopting an ordinance under this article shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the buildings in such municipality for the purpose of determining the fitness of such buildings for human habitation, use or occupancy, and for the enforcement and administration of its ordinances adopted under this article; and any such municipality is authorized to make such appropriations from its revenues as it may deem necessary for this purpose, and may accept and apply grants or donations to assist it in carrying out the provisions of such ordinances.

SOURCES: Codes, 1942, § 3507; Laws, 1938, ch. 337, § 7; Laws, 1958, ch. 525, § 5.

§ 43-35-117. Construction of law.

Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of any city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law.

SOURCES: Codes, 1942, § 3509; Laws, 1938, ch. 337, § 9.

ARTICLE 5.

OFF-STREET PARKING AND BUSINESS DISTRICT RENEWAL.

SEC.
43-35-201. Municipal parking facilities; delegation of power, duties, and responsibilities.
43-35-202. Special parking facility taxing districts.
43-35-203. Revenue bonds; form; maturity; execution; interest.
43-35-205. Revenue bonds; sale.
43-35-207. Revenue bonds; negotiability; tax exemption.
43-35-209. Disposition of proceeds; additional bonds to provide for deficit; disposition of surplus.
43-35-211. Bonds payable out of net revenues; payments in lieu of taxes.
43-35-213. Covenants affecting security of bonds; bondholders' lien.
43-35-215. Trust agreements.
43-35-217. Validation of bonds.
43-35-219. Attorney's fees.
43-35-221 through 43-35-229. Repealed.
43-35-231. Authority conferred by article cumulative.
43-35-233. Authority for issuance of bonds.
43-35-235. Appointment of additional members to board of urban renewal agency.
43-35-237. Definitions.

§ 43-35-201. Municipal parking facilities; delegation of power, duties, and responsibilities.

The governing authorities of any municipality of one hundred thousand (100,000) population or more, and the governing authorities of any municipality of twenty-five thousand (25,000) population or more located in any county adjacent to a county in which a municipality of one hundred thousand (100,000) or more is located, and the governing authorities of any municipality having a population of more than eleven thousand (11,000) but less than eleven thousand two hundred (11,200) according to the 1980 decennial census located in any county adjacent to a county having a municipality of one hundred thousand (100,000) or more, and the governing authorities of any municipality in any county having a population in excess of one hundred thirty thousand (130,000) according to the 1970 decennial census, and the governing authorities of any municipality in any county having a population in excess of twenty-seven thousand (27,000) according to the 1970 decennial census and bordering on the State of Tennessee wherein United States Highways 45 and 72 intersect, and the governing authorities of any municipality in any county having a population in excess of thirty-eight thousand (38,000) according to the 1980 decennial census and bordering on the Mississippi River wherein United States Highways 61 and 84 intersect shall have, and may, within their discretion, by resolution duly adopted, delegate to its urban renewal agency or redevelopment authority created pursuant to Section 43-35-33, any or all of the following additional powers, duties and responsibilities, as specified in the resolution of the governing authorities of the municipality.

(a) The power and authority to establish and construct municipal parking facilities for motor vehicles belonging to members of the general public, and to rent, lease, purchase or acquire by the power of eminent domain, in any manner now authorized by law for the acquisition of land and property for public purposes, the necessary lands and property for the establishment and construction of such parking facilities and related structures; the power and authority to prescribe rules, regulations and rates for the use and operation of such parking facility; to employ, fix and pay the compensation of necessary operating personnel; to rent, sell, convey, transfer, let or lease said facility and related structures or any portion thereof, or any space therein, on such terms and conditions as shall be reasonable; to lease or sell air rights over and adjacent to such facilities. Commercial enterprise activities other than parking of motor vehicles may be authorized on leased property comprising any part of such parking facilities and related structures, but only upon an express finding, by resolution of the governing authorities of the municipality as hereinafter provided, that such commercial enterprise activities are essential to the economic feasibility of the proposed parking facilities. Before proceeding to exercise or delegate the powers and authority provided in this paragraph (a), the governing authorities of such municipality shall adopt and publish an ordinance and conduct the hearing as provided in Section 21-37-25 and any citizens may appeal as therein provided.

(b) To plan, establish, construct, build, maintain and operate inland ports, and to this end to negotiate, receive, contract for and expend funds from any source, including but not limited to, city, county, state and federal funds and private donations.

(c) To cooperate with and act jointly with other political subdivisions and agencies of the State of Mississippi and other commissions, departments and instrumentalities of the municipality, and with the federal government and agencies thereof.

SOURCES: Codes, 1942, § 3374-201; Laws, 1970, ch. 499, § 1; Laws, 1972, ch. 399, § 1; Laws, 1984, ch. 473, § 1; Laws, 1988, ch. 430, § 1, eff from and after passage (approved April 23, 1988).

Cross References — Power of certain municipalities to establish a parking and business improvement area, see §§ 21-43-1 et seq.

Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

Urban renewal agency, see § 43-35-33.

Provision that a municipality having a population of 100,000 or more which has established a municipal parking facility pursuant to this section may establish one or more special parking facility taxing districts, see § 43-35-202.

Issuance of bonds by municipalities which have established municipal parking facilities pursuant to this section, see § 43-35-203.

Appointment of additional members to board of renewal agency, see § 43-35-235.

JUDICIAL DECISIONS

1. In general.

Section 43-35-201 is not a local, private and special law granting the power to exercise the right of eminent domain contrary to the Mississippi Constitution, Art. 4, § 90(r), insofar as its application to municipalities of 100,000 population or more is a general classification based solely on population and is not tied to a particular census; under this statute, a redevelopment agency could properly build a mall in its proposed public parking facility. Jackson Redevelopment Auth. v. King, Inc., 364 So. 2d 1104 (Miss. 1978).

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 10 et seq.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 425.

§ 43-35-202. Special parking facility taxing districts.

(1) The governing authorities of any municipality having a population of one hundred thousand (100,000) or more, and the governing authorities of any municipality having a population of more than eleven thousand (11,000) but less than eleven thousand two hundred (11,200) according to the 1980 decennial census located in any county adjacent to a county having a municipality of one hundred thousand (100,000) or more, which have elected, or hereafter may elect, to exercise or delegate the power and authority to establish and construct municipal parking facilities for motor vehicles belonging to members of the general public, as provided in Section 43-35-201, are hereby authorized and empowered to establish one or more special parking facility taxing districts and to levy, collect and make an annual special tax not to exceed six (6) mills against all property in each such special parking facility taxing district, provided that such special taxes shall not be levied, collected or made unless the governing authorities shall have adopted a resolution (i) designating an area a special parking facility taxing district; (ii) specifying the maximum millage to be levied on property in such area pursuant to this subsection; and (iii) if such area shall not be within one (1) or more urban renewal areas as defined in Article 1, Chapter 35, Title 43, Mississippi Code of 1972, declaring such area to be a slum area or a blighted area or a combination thereof within the meaning of Article 1, Chapter 35, Title 43, Mississippi Code of 1972. Such special tax levy shall be excluded from the limitations imposed under Section 27-39-321. Prior to adopting such resolution, the governing

authorities shall hold a public hearing with respect thereto after public notice by publication at least twice, once a week for two (2) consecutive weeks, with the first publication being not less than fourteen (14) calendar days prior to the date specified for such hearing, such notice to include the date, time and place of such hearing, the proposed boundaries of such special parking facility taxing district and the maximum special tax to be levied on property in such district pursuant to this subsection. The boundaries of such special parking facility taxing district shall not be modified and special taxes shall not be levied in excess of the maximum set forth in such resolution, unless the governing authorities shall have amended such resolution after a public hearing and notice as described above. The proceeds of any special tax levied on property in a special parking facility taxing district pursuant to this subsection (1) shall be used solely to pay principal of and interest on bonds issued by such municipality under Section 43-35-203 with respect to parking facilities located within such special parking facility taxing district or shall be paid to the urban renewal agency or redevelopment authority to which the power and authority to establish to construct municipal parking facilities shall have been delegated and used by such urban renewal agency or redevelopment authority to pay principal of and interest on bonds issued by such urban renewal agency or redevelopment authority under Section 43-35-203 with respect to parking facilities located within such special parking facility taxing district. The governing authorities of such municipality shall levy such tax at the maximum rate specified in such resolution against all property in such special parking facility taxing district for so long as any bonds issued pursuant to Section 43-35-203 with respect to parking facilities located within such special parking facility taxing district shall be outstanding unless the governing body of the urban renewal agency or redevelopment authority shall certify that a lesser rate will provide revenues sufficient to pay debt service on all bonds payable from such tax and to pay costs of owning, operating and managing parking facilities located in such special parking facility taxing district, in which event such governing authorities shall levy such tax at such lesser rate. The governing authorities of a municipality may also enter into agreements for the benefit of holders of bonds issued by an urban renewal agency or redevelopment authority pursuant to Section 43-35-203 limiting or restricting issuance of bonds by such municipality which would be payable from such special tax to the extent that such governing authorities shall determine that such agreements are necessary or desirable in connection with the issuance of bonds by an urban renewal agency or redevelopment authority pursuant to Section 43-35-203. Such tax shall cease to be levied after all principal of and interest on bonds issued under Section 43-35-203 with respect to parking facilities located within such special parking facility taxing district shall have been paid in full.

(2) The governing authorities of any municipality having a population of one hundred thousand (100,000) or more, and the governing authorities of any municipality having a population of more than eleven thousand (11,000) but less than eleven thousand two hundred (11,200) according to the 1980

decennial census located in any county adjacent to a county having a municipality of one hundred thousand (100,000) or more, which have elected, or hereafter may elect, to exercise or delegate the power and authority to establish and construct municipal parking facilities for motor vehicles belonging to members of the general public, as provided in Section 43-35-201, are hereby authorized to adopt and carry out one or more parking facility tax increment financing plans and to enter into agreements, which may extend over any period of time, any other rule of law to the contrary notwithstanding, with any urban renewal agency or redevelopment authority to which such power and authority shall have been delegated to pay to such urban renewal agency or redevelopment authority an amount equal to the parking facility tax increment financing revenues received by such municipality and allocated to parking facilities pursuant to such parking facility tax increment financing plan. Such agreements may also include such reasonable provisions as the governing body shall determine to be appropriate to provide security for the holders of bonds issued or to be issued by such urban renewal agency or redevelopment authority which are payable in whole or in part from payments pursuant to such agreements.

In the event that a municipality or urban renewal agency or redevelopment authority shall have entered into an agreement with a private person, firm or partnership under which such private person, firm or partnership shall have agreed to construct specific buildings or other facilities or improvements, to pay all real property taxes due on such buildings or other facilities or improvements in a timely manner and to maintain and operate such buildings or other facilities or improvements in such a manner as to preserve property values, such agreement may specify a minimum payment to be made by such municipality based on the governing body's determination of the expected ad valorem taxes to be received from such buildings or other facilities or improvements, in which event such municipality shall be unconditionally obligated to make such payments from its general fund or other available funds, regardless of whether actual ad valorem taxes shall have been less than such amount.

(3) The governing authorities of any county in which a municipality is located which has adopted, or hereafter may adopt, a parking facility tax increment financing plan as provided in this Section 43-35-202, are hereby authorized to become a party to such parking facility tax increment financing plan and enter into agreements, which may extend over any period of time notwithstanding any rule of law to the contrary, to pay to such municipality, or any urban renewal agency or redevelopment authority to which power and authority to establish and construct municipal parking facilities for motor vehicles belonging to members of the general public shall have been delegated, an amount equal to the parking facility tax increment financing revenues received by such county and allocated to parking facilities pursuant to such tax increment financing plan. Such agreements may also include such reasonable provisions as the governing body shall determine to be appropriate to provide security for the holders of bonds issued or to be issued by such urban renewal

agency or redevelopment authority which are payable in whole or in part from payments pursuant to such agreements.

In the event that a county, municipality or urban renewal agency or redevelopment authority shall have entered into an agreement with a private person, firm or partnership under which such private person, firm or partnership shall have agreed to construct specific buildings or other facilities or improvements, to pay all real property taxes due on such buildings or other facilities or improvements in a timely manner and to maintain and operate such buildings or other facilities or improvements in such a manner as to preserve property values, such agreement may specify a minimum payment to be made by such county based on the governing body's determination of the expected ad valorem taxes to be received from such buildings or other facilities or improvements, in which event such county shall be unconditionally obligated to make such payments from its general fund or other available sources regardless of whether actual ad valorem taxes shall have been less than such amount.

SOURCES: Laws, 1985, ch. 465, § 2; Laws, 1988, ch. 430, § 2, eff from and after passage (approved April 23, 1988).

Cross References — Provisions relative to the payment of bonds out of revenues available under this section, see § 43-35-211.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 10 et seq.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 425.

§ 43-35-203. Revenue bonds; form; maturity; execution; interest.

The governing authorities of any municipality which has elected, or hereafter may elect, to exercise or delegate the power and authority to establish and construct municipal parking facilities for motor vehicles belonging to the general public, as provided in Section 43-35-201, and the governing authorities of any urban renewal agency or redevelopment authority to which such power and authority shall have been delegated are hereby authorized and empowered, in their discretion, to issue bonds for the purpose of acquiring land and property for a municipal parking facility and related structures and also for owning, erecting, building, establishing, operating and maintaining such facilities and related structures and to remodel or repair the same, and to refund outstanding bonds and to pay costs relating to the issuance of such bonds and interest on such bonds and to establish any reserves determined to be appropriate. Such bonds may be issued without an election thereon upon the adoption of a resolution by the governing authorities of such issuing authority. Such bonds shall not be subject to any limitation as to amount, and shall not be included in computing the statutory limitation of indebtedness of such issuing authority under any present or future law. Such bonds shall bear date or dates, shall be of such denomination or denominations, shall bear interest at such rates not to exceed the maximum rate specified in Section 75-17-103, shall be payable at such place or places within or without the State of Mississippi, shall mature at such time or times and upon such terms and may be made redeemable prior to maturity with or without premium, shall bear such registration privileges and shall be in substantially such form as shall be determined by resolution of the governing authorities of such issuing authority.

Such bonds shall be executed by the manual or facsimile signature of the mayor or chairman and clerk or secretary of such issuing authority, with the seal of the issuing authority affixed thereto or reproduced thereon. Whenever such bonds shall have been signed by the officials designated to sign the same who were in office at the time of such signing but who may have ceased to be such officers prior to the date of the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

SOURCES: Codes, 1942, § 3374-202; Laws, 1970, ch. 499, § 2; Laws, 1985, ch. 465, § 3, eff from and after July 1, 1985.

Cross References — Provision that the proceeds of any special tax levied on property in a special parking facility taxing district shall be used to pay principal of an interest on bonds issued under this section with respect to parking facilities located within such district, see § 43-35-202.

Provision that the term "issuing authority" includes any urban renewal agency or redevelopment authority having authority to issue bonds pursuant to this section, see § 43-35-237.

§ 43-35-205. Revenue bonds; sale.

The governing authorities of such municipality shall sell such bonds on sealed bids at not less than par plus accrued interest to date of delivery of the bonds to the purchaser and in the manner provided in Section 31-19-25, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 3374-203; Laws, 1970, ch. 499, § 3, eff from and after passage (approved April 3, 1970).

§ 43-35-207. Revenue bonds; negotiability; tax exemption.

All bonds and interest coupons issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of Mississippi. Such bonds and the income therefrom shall be exempt from all taxation within the State of Mississippi, except inheritance taxes.

SOURCES: Codes, 1942, § 3374-204; Laws, 1970, ch. 499, § 4, eff from and after passage (approved April 3, 1970).

Cross References — Uniform Commercial Code — Negotiable Instruments, see §§ 75-3-101 et seq.

§ 43-35-209. Disposition of proceeds; additional bonds to provide for deficit; disposition of surplus.

The principal proceeds of such bonds shall be paid into a special fund in a bank or banks qualified as depositories for the municipality or for the urban renewal agency or redevelopment authority to which the municipality has delegated its power and authority with respect to such parking facilities. The accrued interest and premium, if any, shall be paid into the fund established for the payment of the principal of and interest on such bonds. The principal proceeds shall be used solely for the purposes for which such bonds were issued, except as hereinafter provided, and shall be disbursed upon order of the board of commissioners of the urban renewal agency or redevelopment authority having jurisdiction of said parking facilities, or upon order of the governing authorities of such municipality, as the case may be. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the project for which such bonds were issued and the redeeming of any outstanding bonds, then and in such event, unless otherwise provided in the resolution authorizing the issuance of such bonds, additional bonds may in like manner, be issued to provide the amount of such deficit. Unless otherwise provided in the resolution authorizing the issuance of bonds, such additional bonds shall be deemed to be of the same issue as the original bonds and shall be entitled to payment from the same funds without preference or priority to the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the project for which the bonds were issued, such surplus shall be paid into the fund established for the payment of the principal of and interest on such bonds.

SOURCES: Codes, 1942, § 3374-205; Laws, 1970, ch. 499, § 5, eff from and after passage (approved April 3, 1970).

§ 43-35-211. Bonds payable out of net revenues; payments in lieu of taxes.

Bonds issued under the provisions of this article shall be payable, both principal and interest, solely out of such (i) special taxes levied pursuant to subsection (1) of Section 43-35-202, (ii) parking facility tax increment financing revenues as provided in subsection (2) of Section 43-35-202, (iii) payments to be made to any redevelopment authority or urban renewal agency or municipality authorized pursuant to subsections (1), (2) or (3) of Section 43-35-202, or (iv) net revenues to accrue from the operation of the parking facilities and related structures for which such bonds were issued or any combination thereof, as shall be specified in the resolution authorizing issuance of such bonds, and the full faith and credit of the issuing authority shall not be pledged therefor, and such fact shall be recited on the face of each bond. "Revenues" as used herein with respect to parking facilities shall mean all charges, rentals, tolls, rents, gifts, grants, contributions, and all other funds accruing from the operation, lease, or sale of parking facilities and related structures; "net revenues" as used herein, shall mean the revenues remaining after payment of costs and expenses of operation and maintenance of the parking facilities and related structures. The commissioners of an urban renewal agency or redevelopment authority may, in their discretion, make payments to the municipality and county within which such parking facilities are located, in lieu of taxes, and such payments may be deducted in determining net revenues to the extent permitted in the resolution under which such bonds are issued.

SOURCES: Codes, 1942, § 3374-206; Laws, 1970, ch. 499, § 6; Laws, 1985, ch. 465, § 4, eff from and after July 1, 1985.

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

Payments in lieu of taxes on government property, generally, see §§ 27-37-1 et seq.

§ 43-35-213. Covenants affecting security of bonds; bondholders' lien.

(a) A resolution issuing bonds in compliance with this article may include any covenants with the bondholders deemed necessary to make such bonds secure and marketable, including, but without limitation, covenants regarding the application of the bond proceeds; the pledging, application and securing of special taxes, parking facility tax increment financing revenues, payments from municipalities and counties, other revenues and the revenues of the parking facilities; the creation and maintenance of reserves; covenants to levy special taxes and other taxes; covenants to enforce agreements; the investment of funds; the issuance of additional bonds; the maintenance of minimum fees, charges and rentals; the operation and maintenance of facilities; insurance and insurance proceeds; accounts and audits; the sale of properties; remedies of bondholders; the vesting in a trustee or trustees such powers and rights as may be necessary to secure the bonds and the revenues and funds from which they are payable; the terms and conditions upon which bondholders may exercise their rights and remedies; the replacement of lost, destroyed or mutilated bonds; the definition, consequences and remedies of an event of default; and the appointment of a receiver in the event of a default.

(b) All taxes and revenues pledged to the payment of such bonds shall be subject to a lien in favor of the holders of such bonds, and all such taxes and revenues received by the issuing authority shall be immediately subject to such lien without any physical delivery thereof or further act by the issuing authority, and such lien shall be effective as against all parties asserting claims against the issuing authority, whether by way of tort, contract or otherwise, whether or not such parties may have had notice of such lien. Such pledge or trust agreement creating the same need not be filed or recorded except in the official minutes of the issuing authority.

(c) The state does hereby covenant with the holders of any such bonds that it will not, while any such bonds shall be outstanding, limit or diminish the right and power of any county, municipality or urban renewal agency or redevelopment authority to establish, maintain and collect rates, fees, rentals and other charges pledged to the payment of such bonds, or to levy the special taxes authorized by this article, to fulfill any covenants with or for the benefit of such bondholders, or to make or receive payments pursuant to a parking facility tax increment financing plan.

SOURCES: Codes, 1942, § 3374-207; Laws, 1970, ch. 499, § 7; Laws, 1985, ch. 465, § 5, eff from and after July 1, 1985.

§ 43-35-215. Trust agreements.

In the discretion of the issuing authority, all bonds may be further secured by a trust agreement between the issuing authority and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the state. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law. The trust agreement may contain provisions for the issuance of additional bonds under the procedures established by this article for any of the purposes authorized by this law which shall be secured by the revenues pledged thereunder for such bonds to the extent provided therein.

The trust agreement may include provisions to the effect that, if there is any default in the payment of principal or interest on any of said bonds, any court of competent jurisdiction may appoint a receiver to administer the properties and facilities of the authority described in the trust agreement on behalf of the municipality or urban renewal agency or redevelopment authority, including authority to sell or make contracts for the sale of any services, facilities or commodities of the authority or to renew such contracts, subject to the approval of the court appointing the said receiver; and with power to provide for the payment of such bonds outstanding, or the payment of operating expenses, and to apply the income and revenues to the payment of the said bonds and interest thereon in accordance with the resolution of the authority authorizing the issuance of such bonds and the said trust agreement. The fee for the services of any corporate trustee shall not exceed the normal charges for acting as paying agent, plus any additional amount or amounts allowed by the court as the reasonable value of services rendered by the corporate trustee.

The powers herein granted may be exercised whether or not a trust agreement is entered into and, if no trust agreement is entered into, such provisions as are above authorized may be set out in the resolution authorizing the bonds.

SOURCES: Codes, 1942, § 3374-208; Laws, 1970, ch. 499, § 8, eff from and after passage (approved April 3, 1970).

§ 43-35-217. Validation of bonds.

Bonds authorized and issued hereunder shall be submitted to validation in the chancery court of the county in which such parking facilities are located, in the manner and with the same force and effect as now or hereafter provided by Chapter 13, Title 31, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 3374-209; Laws, 1970, ch. 499, § 9, eff from and after passage (approved April 3, 1970).

§ 43-35-219. Attorney's fees.

Prior to the authorization, issuance, and subsequent validation of bonds issued under this article, the issuing authority shall have secured the legal services of a competent practicing attorney or firm of attorneys. However, in no instance shall the attorney's fees paid for the issuance or refunding of such bonds exceed the following amounts, to-wit:

On all such bond issues the attorney's fees shall not exceed one percent (1%) of the first one million dollars ($1,000,000.00); one-half percent (½%) of all over one million dollars ($1,000,000.00) and not more than two million dollars ($2,000,000.00); and one-fourth percent (¼%) of all amounts in excess of two million dollars ($2,000,000.00).

SOURCES: Codes, 1942, § 3374-210; Laws, 1970, ch. 499, § 10, eff from and after passage (approved April 3, 1970).

§§ 43-35-221 through 43-35-229. Repealed.

Repealed by Laws 1980, ch. 441, § 5, eff from and after its passage (approved May 1, 1980).

§ 43-35-221. [Laws, 1970, ch. 499, § 11]
§ 43-35-223. [Laws, 1970, ch. 499, § 12]
§ 43-35-225. [Laws, 1970, ch. 499, § 13]
§ 43-35-227. [Laws, 1970, ch. 499, § 14]
§ 43-35-229. [Laws, 1970, ch. 499, § 15]

Editor's Note — Former § 43-35-221 authorized municipalities having populations of 100,000 or more to undertake urban renewal or redevelopment projects in their central business districts, subject to the approval of a majority of voters voting in a special election on the question.

Former § 43-35-223 required the adoption and publication of a resolution by the governing authority of a municipality, setting forth its intention to undertake an urban renewal or redevelopment project in its central business district.

Former § 43-35-225 provided the details of conducting a special municipal election on a proposed urban renewal project in a central business district and set out the form of ballot to be used.

Former § 43-35-227 dealt with certifying and declaring the results of a special election on the question of participating in an urban renewal project in the central business district.

Former § 43-35-229 related to the authority of the municipality to proceed with carrying our urban renewal projects in its central business district following approval by a majority of voters voting in a special election on the question.

§ 43-35-231. Authority conferred by article cumulative.

The authority and power conferred upon the municipalities by this article shall be cumulative and in addition to any other authorities and powers conferred upon them by law and shall not be construed to in any way diminish or limit any other such authorities or powers.

SOURCES: Codes, 1942, § 3374-216; Laws, 1970, ch. 499, § 16, eff from and after passage (approved April 3, 1970).

§ 43-35-233. Authority for issuance of bonds.

Bonds may be issued pursuant to this article without any other proceedings or the happening of any other conditions or things than those specified or required by this article.

SOURCES: Codes, 1942, § 3374-217; Laws, 1970, ch. 499, § 17, eff from and after passage (approved April 3, 1970).

§ 43-35-235. Appointment of additional members to board of urban renewal agency.

The governing authorities of any municipality which has delegated to its urban renewal agency or redevelopment authority the powers, duties and responsibilities relating to parking facilities as provided for in Section 43-35-201, may, within their discretion, appoint two (2) additional members to the board of commissioners of such urban renewal agency, in addition to the five (5) members provided for in Section 43-35-33. Such additional commissioners shall be appointed in the same manner and for the same term, and shall have the same qualifications and shall otherwise be subject to the provisions of Section 43-35-33 and Section 43-35-35.

SOURCES: Codes, 1942, § 3374-218; Laws, 1970, ch. 499, § 18, eff from and after passage (approved April 3, 1970).

§ 43-35-237. Definitions.

For the purposes of this article the following terms shall have the meanings given in this section unless a different meaning is clearly indicated by the context:

(a) "Base year value" shall mean the appraised value of a property used in assessing ad valorem taxes for the year in which a parking facility tax increment financing plan covering such property shall have been adopted or, if later, the year in which such property was included in a parking facility tax increment financing plan; provided that, if any property shall have been exempt from ad valorem taxation for the year in which a parking facility tax increment financing plan shall have been adopted or, if later, the year in which such property was included in a parking facility tax increment financing plan, and shall thereafter become subject to ad valorem taxation, the base year value shall be the appraised value of such property used in assessing taxes during the first year that such property shall be subject to ad valorem taxation or, if lesser, the appraised value, as certified by the applicable tax assessor, which would have been used in assessing taxes during the preceding year if the property had been subject to ad valorem taxation.

(b) "Issuing authority" means any city or town incorporated under the laws of the State of Mississippi or any urban renewal agency or redevelopment authority within such city or town having authority to issue bonds pursuant to Section 43-35-203.

(c) "Municipality" means any city or town incorporated under the laws of the State of Mississippi.

(d) "Parking facility tax increment financing plan" means a plan for allocating all or a part of any increases in general fund ad valorem taxes arising as a result of increases in the value of specific properties or properties in designated areas (or any combination thereof) to defray costs relating to parking facilities. Such plan shall be sufficiently complete to indicate the anticipated increases in general fund ad valorem taxes, the percentage or dollar amount of such taxes to be allocated to defray costs relating to parking facilities and the specific properties or specific area (or combination) covered by such plan.

(e) "Parking facility tax increment financing revenues" means the increases in general fund ad valorem taxes received as a result of increases in the values of specific properties or properties located in a designated area. Such increases, with respect to specific properties during a year, shall be the amount by which general fund ad valorem taxes received during such year as a result of levies on such property exceed the general fund ad valorem taxes which would have been received if such property were assessed based on its base year value. Such increases, with respect to properties located in specific areas during a year, shall be the amount by which general fund ad valorem taxes received during such year as a result of levies on all nonexempt properties in such area exceed the general fund ad valorem taxes which would have been received if such nonexempt properties were assessed based on the base year value of each such property.

SOURCES: Laws, 1985, ch. 45, § 1, eff from and after July 1, 1985.

ARTICLE 7.

DESIGNATION OF AREAS FOR DEVELOPMENT AND REDEVELOPMENT.

SEC.
43-35-301. Declaration of legislative intent.
43-35-303. Refurbishing of physical facilities authorized.
43-35-305. Designation of location of facility; hearing.
43-35-307. Determination of cost.
43-35-309. Charges for use of facilities.
43-35-311. Levy of taxes.
43-35-313. Issuance of bonds.
43-35-315. Article is full and complete authority for expenditures and bonds.

§ 43-35-301. Declaration of legislative intent.

It is hereby declared to be the intent of the Legislature, by this article, to assist municipalities of this state in the growth, development and redevelopment of downtown areas within their corporate limits by authorizing any of said municipalities to designate areas for development and/or redevelopment and to provide a method for accomplishing said purpose.

SOURCES: Codes, 1942, § 3374-251; Laws, 1972, ch. 395, § 1, eff from and after passage (approved April 26, 1972).

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

Additional powers of municipalities and housing authorities with respect to community development, see § 43-35-503.

§ 43-35-303. Refurbishing of physical facilities authorized.

The governing authorities of any municipality are hereby authorized and empowered, in their discretion, to construct, repair, improve, renovate or otherwise recondition physical facilities owned or leased by the municipality within the municipalities subject to the provisions hereinafter set out.

SOURCES: Codes, 1942, § 3374-252; Laws, 1972, ch. 395, § 2, eff from and after passage (approved April 26, 1972).

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

RESEARCH REFERENCES

ALR. What constitutes "blighted area" within urban renewal and redevelopment statutes. 45 A.L.R.3d 1096.

Am Jur. 40 Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 15 et seq.

§ 43-35-305. Designation of location of facility; hearing.

The governing authorities, prior to utilizing the authority granted under this article, shall designate the area within which said facility shall be located and shall hold a hearing as provided in Section 21-41-5, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 3374-253; Laws, 1972, ch. 395, § 3, eff from and after passage (approved April 26, 1972).

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 19 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Development, Forms 8, 9 (findings of fact — in connection with proposed slum clearance and urban redevelopment project).

§ 43-35-307. Determination of cost.

In determining the overall cost of said facility, the following are to be considered by the governing authorities: the acquisition of the land, either by purchase or lease or otherwise, and all expenses incident thereto; the cost of any surfacing, building, lighting, drainage or other improvements necessary for the safe and convenient maintenance and operation of such facility; whatever annual costs of operation are necessary by way of maintenance, police or fire protection; and all other operational or administrative expenses. The costs and all expenses incurred by virtue of this article shall be charged upon the property benefitted thereby.

SOURCES: Codes, 1942, § 3374-254; Laws, 1972, ch. 395, § 4, eff from and after passage (approved April 26, 1972).

§ 43-35-309. Charges for use of facilities.

The governing authorities of such municipality are hereby authorized, in their discretion, to make such charges as would be deemed proper for the use of such facilities. Any revenue received from any of such charges may be pledged for the payment of bonds issued hereunder or otherwise credited against the cost and expense to be charged against the property benefitted thereby.

SOURCES: Codes, 1942, § 3374-255; Laws, 1972, ch. 395, § 5, eff from and after passage (approved April 26, 1972).

§ 43-35-311. Levy of taxes.

The governing authorities are hereby authorized and empowered to levy, collect and make any annual special tax or assessment against the benefitted property in the designated area. However, no assessment, not to exceed five (5) mills, made under the provisions of this article shall be made against the benefitted property until notice of the proposed action is furnished to the owners of the property on which said assessment is to be made, in the same manner as provided in Section 21-41-5, Mississippi Code of 1972. At the meeting called for the hearing of any objections that may be made by said property owners, any property owner aggrieved may appear in person, by attorney, or by petition on any objection to the proposal or any part thereof. The board shall consider the objections, if any, and may confirm, modify or rescind the resolution of necessity and shall determine whether said proposal shall be implemented and how the cost thereof shall be paid. The determination of the board shall be final and conclusive at the expiration of the protest period hereinafter provided, subject only to an appeal to a court of appropriate jurisdiction within thirty (30) days after said order becomes final. If property owners owning more than one-third (1/3) of the front footage of the property in the designated area shall file a protest, then the provisions of this article shall not be utilized. Any protest made, as provided herein, shall be in writing, signed by the property owner or his legal representative and filed with the city clerk within forty-five (45) days of the adjournment of said meeting. The special tax levy herein provided shall not affect or apply to any property in the designated area that is used as residential property and qualifies as a homestead under the provisions of the Homestead Exemption Law being Sections 27-33-3 et seq., Mississippi Code of 1972.

SOURCES: Codes, 1942, § 3374-256; Laws, 1972, ch. 395, § 6, eff from and after passage (approved April 26, 1972).

Cross References — Provision in redevelopment project whereby municipal ad valorem taxes levied on taxable property within the project shall be divided according to a tax increment financing plan, see § 21-45-7.

§ 43-35-313. Issuance of bonds.

The governing authorities of such municipality are hereby authorized to issue bonds for the cost hereinabove referred to or to defray any expenditures made by said municipality out of its general fund which are necessary and authorized herein. Such bonds shall be sold on sealed bids at public sale in the manner provided by Section 31-19-25, Mississippi Code of 1972. Any expenditure disbursed from said general fund shall be repaid from the proceeds of the bond issue. Any bonds issued under the provisions of this article shall have an amortization period of up to ten (10) years, such period to be determined by said governing authorities. The interest on such bonds issued under the provisions of this article shall bear a rate of interest not to exceed the limits set forth in Section 21-33-315, Mississippi Code of 1972. The principal of and the interest on such bonds shall be payable from the special taxes or assessments levied against the benefitted property in the designated area, as provided in Section 43-35-311, and may be further secured by a pledge of and payable from any revenue received from any charges for the use of facilities constructed with the proceeds of such bonds.

SOURCES: Codes, 1942, § 3374-257; Laws, 1972, ch. 395, § 7, eff from and after passage (approved April 26, 1972).

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

§ 43-35-315. Article is full and complete authority for expenditures and bonds.

This article shall be deemed to be full and complete authority for the expenditure of money and the issuance of bonds as are hereby authorized and shall be construed as an additional and alternate method therefor.

SOURCES: Codes, 1942, § 3374-258; Laws, 1972, ch. 395, § 8, eff from and after passage (approved April 26, 1972).

ARTICLE 9.

COMMUNITY DEVELOPMENT.

SEC.	
43-35-501.	Short title.
43-35-503.	Authority of counties, municipalities and housing authorities with respect to community development grants.
43-35-504.	Block grants for improvements to existing public water systems; viability requirement and determination; viability exceptions.
43-35-505.	Provisions to be supplemental.

§ 43-35-501. Short title.

This article shall be known and may be cited as the "Community Development Law."

SOURCES: Laws, 1980, ch. 441, § 1, eff from and after passage (approved May 2, 1980).

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

ATTORNEY GENERAL OPINIONS

There is no authority permitting municipality to provide free office space and utilities for physician in medical building owned by city, but if specific terms of Community Development Block Grant require that municipality furnish office space and utilities for physician as condition of grant, municipality has authority to comply with those terms of grant pursuant to Section 43-35-501 et seq. Navarro, August 3, 1993, A.G. Op. #93-0518.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 1 et seq.

§ 43-35-503. Authority of counties, municipalities and housing authorities with respect to community development grants.

(1) Any county, municipality, regional housing authority, or local housing authority in the state may make application to and contract with the United States or any department thereof for a grant or grants authorized to be made by the United States under the authority of the Housing and Community Development Act of 1974, as amended (42 USCS 5301 et seq., as amended), and to comply with all the terms and conditions of such grant or grants.

(2) In addition to the powers granted to counties, municipalities, regional housing authorities, and local housing authorities under the Housing Authorities Law (Sections 43-33-1 through 43-33-53), Sections 43-33-61 through 43-33-69, Sections 43-33-101 through 43-33-137, the Urban Renewal Law (Sections 43-35-1 through 43-35-37), and Sections 43-35-301 through 43-35-315, a county, municipality, regional housing authorities, and local housing authorities shall have all the powers necessary or convenient to carry out the programs which are the subject of the grant or grants for which it has so contracted under this section, including, but not limited to, the power to buy, lease or sell real or personal property obtained through the use of or in connection with such grant or grants, and the power to loan funds received under such grant or grants to nonprofit community and economic development corporations, private corporations organized for profit, partnerships, limited partnerships, joint ventures, or other persons, for the purposes of creating job opportunities and to promote local industrial or economic development. A county, municipality, regional housing authority, or local housing authority may charge interest on such loans, if contracted, and may invest or reloan the proceeds of the principal and interest from such loans. However, such loans shall be made only from funds obtained from such grant or grants, or from income produced by such grant or grants.

SOURCES: Laws, 1980, ch. 441, § 2; Laws, 1988, ch. 364, eff from and after passage (approved April 18, 1988).

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

ATTORNEY GENERAL OPINIONS

County and/or city has authority to contractually obligate itself to repay Community Development Block Grant if such is required to comply with all terms and conditions of grant. Barry, Sept. 10, 1992, A.G. Op. #92-0722.

A board of supervisors may neither invest in a corporation nor obligate the full faith and credit of the county as guarantor of a loan to such corporation. McWilliams, January 9, 1998, A.G. Op. #97-0799.

The expenditure of funds of a Community Development Block Grant Self Help Grant on improvements of property leased for 15 years by the county from a private entity is a legal expenditure. Whitwell, Mar. 8, 2002, A.G. Op. #02-0076.

City may perform work on private property to repair sewer services lines pursuant to the terms and conditions of a community development block grant with the permission of the property owners. Brown, Oct. 18, 2002, A.G. Op. #02-0588.

The expenditure of funds pursuant to the terms of a Community Development Block Grant by the county to extend a water line from a private water association is a legal expenditure. Smith, Aug. 22, 2003, A.G. Op. 03-0299.

A county board of supervisors has the authority to adopt a "Commitment to the Maintenance of the Proposed Project," to commit to annually set aside a specific amount of funds to maintain the improvements, and to acknowledge that failure to maintain will affect future Community Development Block Grant funding. Meadows, Sept. 22, 2006, A.G. Op. 06-0435.

RESEARCH REFERENCES

ALR. Construction and effect of § 3 of Housing and Urban Development Act of 1968, as amended, requiring that, to greatest extent feasible, opportunities for training and employment be provided for, and contract for work be awarded to, persons residing in area of community development projects. 40 A.L.R. Fed. 836.

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 1 et seq.

§ 43-35-504. Block grants for improvements to existing public water systems; viability requirement and determination; viability exceptions.

(1)(a) Except as provided in subsections (2) and (3) of this section, the Executive Director of the Mississippi Development Authority shall not award a community development block grant to any county or municipality for the purpose of making improvements, including expansions, rehabilitation or repair, to an existing public water system, unless that system is determined to be viable. The Mississippi Development Authority may require any applicant for which a determination of viability is required under this section to submit information deemed necessary by the executive director for that determination. A preliminary determination of viability shall be made by the Executive Director of the Mississippi Development Authority following receipt of a written recommendation on viability from the State Health Officer and the Executive Director of the Public Utilities Staff. The recommendation of the State Health Officer and the Executive Director of the Public Utilities Staff shall be based on information received from the Mississippi Development Authority and any other information available to the State Department of Health or Public Utilities Staff, as applicable. The State Department of Health and the Public Utilities Staff shall assist the Mississippi Development Authority in developing appropriate forms as required for implementation of this section.

(b) Within five (5) days following a preliminary determination that a public water system is not viable by the Executive Director of the Mississippi

Development Authority, the executive director shall provide written notice by certified mail, return receipt requested to the owner or president of the board of the system and the governing authority of the applicant. The notice shall contain the reasons for the determination of nonviability. The owner or president of the board of the system may appeal the preliminary determination to the Executive Director of the Mississippi Development Authority, who shall make a final determination.

(2) The Executive Director of the Mississippi Development Authority may award a community development block grant to any county or municipality for the purpose of making improvements, including expansions, rehabilitation or repair, to an existing public water system, if after receipt of a written recommendation from the State Health Officer and the Executive Director of the Public Utilities Staff, the Executive Director of the Mississippi Development Authority makes a final determination that the public water system may become viable as the result of the grant award. The Executive Director of the Mississippi Development Authority may also award a grant if an extreme emergency exists. In making a grant award, the Executive Director of the Mississippi Development Authority may impose any conditions on the grant deemed necessary after consultation with the State Health Officer and the Executive Director of the Public Utilities Staff, including, but not limited to, interconnection with another existing system or satellite or contract management.

(3) A determination of viability shall not be required for the award of grants relating to a portable water supply necessary for the operation of a municipal sewage treatment system.

SOURCES: Laws, 1998, ch. 500, § 1; Laws, 2000, ch. 349, § 1; Laws, 2001, ch. 371, § 1; reenacted and amended, Laws, 2002, ch. 422, § 1; Laws, 2010, ch. 359, § 1, eff from and after passage (approved Mar. 15, 2010.)

§ 43-35-505. Provisions to be supplemental.

The provisions of this article shall be in addition and supplemental to the powers conferred by any other laws.

SOURCES: Laws, 1980, ch. 441, § 3, eff from and after passage (approved May 2, 1980).

Cross References — Tax increment financing of infrastructure and redevelopment improvements, see §§ 21-45-1 et seq.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 1 et seq.

CHAPTER 37

Acquisition of Real Property Using Public Funds

Sec.	
43-37-1.	Title; applicability.
43-37-2.	Definitions.
43-37-3.	Acquisition of real property in publicly funded projects.
43-37-5.	Reimbursement of owner for expenses.
43-37-7.	Reimbursement of fees where condemnation not completed.
43-37-9.	Reimbursement of expenses in cases of inverse condemnation.
43-37-11.	Buildings, structures and improvements to be acquired with land.
43-37-13.	Payments as additives to compensation otherwise provided by law.

§ 43-37-1. Title; applicability.

This chapter shall be known as the "Real Property Acquisition Policies Law."

The provisions of this chapter shall be applicable to the acquisition of real property under the laws of this state for use in any project or program in which public funds are used.

SOURCES: Codes, 1942, § 2749-51; Laws, 1972, ch. 525, § 1; Laws, 1996, ch. 426, § 1, eff from and after passage (approved March 25, 1996).

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

Requiring a landowner to connect to the sewer system and to pay for the connection did not result in a violation of the Real Property Acquisition Policies Law, Miss. Code Ann. §§ 43-37-1 to 43-37-13, because no property was actually acquired from the owner. Croke v. Southgate Sewer Dist., 857 So. 2d 774 (Miss. 2003).

This chapter governs any acquisition of real property for use in any project in which federal funds are used, regardless of whether the funds are used in the actual acquisition of the needed property. Branaman v. Long Beach Water Mgmt. Dist., 730 So. 2d 1146 (Miss. 1999).

ATTORNEY GENERAL OPINIONS

A county must follow Sections 43-37-1 and 43-37-3 in the purchase of a lot located across from the county jail to be used to store county maintenance equipment and as an impound lot for the sheriff's department, and the county must have the property appraised. Fortier, May 9, 2003, A.G. Op. 03-0196.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 17, 18.

§ 43-37-2. Definitions.

The words and terms defined in Section 43-39-5, Mississippi Code of 1972, shall, unless the context otherwise clearly requires, also have the same meanings whenever such words and terms appear in this chapter.

SOURCES: Laws, 1989, ch. 457, § 2, eff from and after passage (approved March 24, 1989).

§ 43-37-3. Acquisition of real property in publicly funded projects.

(1) Any person, agency or other entity acquiring real property for any project or program in which public funds are used shall comply with the following policies:

(a) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, except that the acquiring person, agency or other entity may adopt a procedure in compliance with federal regulations to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value. For the purposes of this chapter, property with a low fair market value is property with a fair market value of Ten Thousand Dollars ($10,000.00) or less. The owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(c)(i) Except as otherwise provided in subparagraph (ii) of this paragraph, the price that shall be paid for real property shall be the lesser of the best negotiated price or the approved appraisal of the fair market value or the price at which the property is offered for sale. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(ii) The purchase price for real property may exceed the amount offered as just compensation for the property when reasonable efforts to negotiate an agreement at that amount have failed, and the person, agency or other entity seeking to acquire the property approves an administrative settlement as reasonable, prudent and in the best interests of the public. When state funds pay for all or a portion of the acquisition, the purchasing person, agency or other entity shall prepare a written statement explaining the reasons that justified the purchase price exceeding the amount offered as just compensation, including any anticipated trial risks, and any available information supporting an administrative settlement.

(d) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or there is deposited with the state court, in accordance with applicable law, for the benefit of the owner an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(e) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least ninety (90) days' written notice from the date by which such move is required.

(f) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring authority on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(g) In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

(h) If an interest in real property is to be acquired by exercise of power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring authority shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(i) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire that remnant shall be made. For the purposes of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the person, agency or other entity acquiring the property determines has little or no value or utility to the owner.

(j) A person whose real property is being acquired in accordance with this chapter may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, any part thereof, any interest therein or any compensation paid therefor to the person, agency or other entity acquiring the property in such manner as he so determines.

(2) Any real property acquired by any person, agency or other entity using public funds in accordance with Section 57-75-37(3) shall be exempt from the provisions of subsection (1)(b) and (c) of this section to the extent permitted by Section 57-75-37(3).

SOURCES: Codes, 1942, § 2749-55; Laws, 1972, ch. 525, § 5; Laws, 1989, ch. 457, § 1; Laws, 1991, ch. 418 § 1; Laws, 1996, ch. 426, § 2; Laws, 2008, ch. 339, § 1; Laws, 2009, ch. 531, § 1; Laws, 2013, 1st Ex Sess, ch. 1, § 12, eff from and after passage (approved Apr. 28, 2013.)

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

A water management district satisfied the requirement that "every reasonable effort shall be made to acquire expeditiously real property by negotiation" where (1) the district made written offers to the landowners, including a full disclosure and breakdown of each component of the just compensation figure, (2) one landowner did not respond to this offer, thereby foreclosing any further negotiation, and (3) although the other landowner was only given five days to even consider this offer before a formal suit was filed, the landowner rejected the offer within that time period. Branaman v. Long Beach Water Mgmt. Dist., 730 So. 2d 1146 (Miss. 1999).

ATTORNEY GENERAL OPINIONS

A city may inquire as to the interest of the potential seller in selling the subject property before initiating actual negotiations as to a price for the subject property without violating the requirement of Section 43-37-3(b) that the subject real property be appraised before the initiation of negotiations. Dorrill, November 1, 1996, A.G. Op. #96-0636.

Section 43-37-3(b) (now 43-37-3(1)(b)) does require that the owner of the subject property or his designated representative be given an opportunity to accompany the appraiser during the appraiser's inspection of the subject property if the property is worth more than $10,000.00. Dorrill, November 1, 1996, A.G. Op. #96-0636.

Section 43-37-3(c) (now 43-37-3(1)(c)(i)) does require that the amount of money offered for the subject property by the municipality may not be less than the approved appraisal of the fair market value of such property. Dorrill, November 1, 1996, A.G. Op. #96-0636.

Section 43-37-3(c) (now 43-37-3(1)(c)(i)) requires that the owner of the real property, on all occasions, must be provided with a written statement of, and summary of the basis for, the amount established as just compensation to be paid by the municipality for the subject property. Dorrill, November 1, 1996, A.G. Op. #96-0636.

Section 43-37-3(c) (now 43-37-3(1)(c)(i)) prohibits a municipality from offering an amount less than the approved appraisal of the fair market value of the subject property to the owner. This statute does not specifically state that the city may or may not pay more than the appraised fair market value of the subject real property. However, the negotiated price paid by a municipality for real property is a matter left to the sound discretion of the governing authorities of the municipality, but must be reasonable and consistent with the property's appraised fair market value. Dorrill, November 1, 1996, A.G. Op. #96-0636.

A property owner may not waive either the appraisal requirement or any other procedures set forth in the statute; however, a property owner may forego receipt of fair market value for the property. Mitchell, Oct. 20, 2000, A.G. Op. #2000-0597.

The process for acquisition of property is set forth in the statute, which states that every reasonable effort must be made to negotiate for the purchase of real property, but only after the county has an appraisal performed. Wolfe, Feb. 2, 2001, A.G. Op. #2001-0018.

A county must follow Sections 43-37-1 and 43-37-3 in the purchase of a lot located across from the county jail to be used to store county maintenance equipment and as an impound lot for the sheriff's department, and the county must have the property appraised. Fortier, May 9, 2003, A.G. Op. 03-0196.

There may be circumstances where a county may pay more than an amount contained in an appraisal for the purchase of property; however, while the final amount paid is to be determined within the discretion of the board of supervisors, and while it may exceed a specific appraisal value, it must be commensurate with the fair market value. Fortier, May 9, 2003, A.G. Op. 03-0196.

A county must offer just compensation in an amount no less than the appraisal for the purchase of property; if the seller then offers to accept less than that amount, the county can pay less. Fortier, May 9, 2003, A.G. Op. 03-0196.

When acquiring real property, a governing authority must comply with the provisions of Section 43-37-3 and may, within its discretion, establish a purchase price which exceeds the appraised value of the property when the determined purchase price is commensurate with the fair market value of the property. Shoemake, Nov. 17, 2006, A.G. Op. 06-0570.

There is no authority for a county to pay delinquent land taxes or to bid on or purchase real property at a county tax sale. Hudson, February 9, 2007, A.G. Op. #07-00038, 2007 Miss. AG LEXIS 19.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment § 23.

9A Am. Jur. Legal Forms 2d, Housing Laws and Urban Redevelopment § 138:45 (agreement for services of real estate appraiser).

§ 43-37-5. Reimbursement of owner for expenses.

Any person, agency or other entity acquiring real property for such use shall as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner, to the extent that the state deems fair and reasonable, for expenses he necessarily incurred for (a) recording fees, transfer taxes and similar expenses incidental to conveying such real property to the state; (b) penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering such real property; and (c) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the state, or the effective date of possession of such real property by the state, whichever is the earlier.

SOURCES: Codes, 1942, § 2749-52; Laws, 1972, ch. 525, § 2, eff from and after July 1, 1972.

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

§ 43-37-7. Reimbursement of fees where condemnation not completed.

Where a condemnation proceeding is instituted by the state, or a subdivision thereof, for a project which is funded in whole or in part by federal funds to acquire real property for such use and (a) the final judgment is that the real property cannot be acquired by condemnation or (b) the proceeding is abandoned, the owner of any right, title or interest in such real property shall be paid such sum as will, in the opinion of the state or the subdivision thereof, reimburse such owner for his reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. The award of such sums will be paid by the person, agency or other entity which sought to condemn the property.

SOURCES: Codes, 1942, § 2749-53; Laws, 1972, ch. 525, § 3, eff from and after July 1, 1972.

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

§ 43-37-9. Reimbursement of expenses in cases of inverse condemnation.

Where an inverse condemnation proceeding is instituted by the owner of any right, title or interest in real property because of use of his property in any program or project in which federal and/or federal-aid funds are used, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or the state's attorney effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or the state's attorney, reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding.

SOURCES: Codes, 1942, § 2749-54; Laws, 1972, ch. 525, § 4, eff from and after July 1, 1972.

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

§ 43-37-11. Buildings, structures and improvements to be acquired with land.

(1) Where any interest in real property is acquired, an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which are required to be removed from such real property or which are determined to be adversely affected by the use to which such real property will be put shall be acquired.

(2) For the purpose of determining the just compensation to be paid for any building, structure or other improvement required to be acquired as above set forth, such building, structure or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building or improvement at the expiration of his term. The fair market value which such building, structure or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(3) Payment for such buildings, structures or improvements as set forth above shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer and release all his right, title and interest in and to such improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures or other improvements shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with the laws of the state.

SOURCES: Codes, 1942, § 2749-56; Laws, 1972, ch. 525, § 6, eff from and after July 1, 1972.

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

Because appellant billboard company's billboard was clearly a structure within the meaning of Miss. Code Ann. § 43-37-11, the special court erred when it found that the company did not have a compensable interest in the eminent domain proceedings. Eller Media Co. v. Miss. Transp. Comm'n, 900 So. 2d 1156 (Miss. 2005).

Company, which was leasing the property that was taken by the Mississippi Transportation Commission, was not entitled to any of the condemnation award of the lessor because it had no leasehold interest as its leases had terminated. Thus, the special court properly granted the Commission's motion for partial summary judgment finding that (1) the company was only entitled to compensation for the value of the billboards on the property that was taken and (2) compensation could only be calculated using the cost analysis, which would provide the company with the new cost of its signs, less depreciation. Eller Media Co. v. Miss. Transp. Comm'n, 882 So. 2d 198 (Miss. 2004).

In an eminent domain case, the special court properly granted the Mississippi Transportation Commission's motion for summary judgment awarding the company, which was leasing the property that was taken and on which it had placed three billboard signs, $ 57,700 for each billboard sign because the parties had entered into and filed a stipulation that the cost new, less depreciation, for each billboard on the property was $ 57,700. Eller Media Co. v. Miss. Transp. Comm'n, 882 So. 2d 198 (Miss. 2004).

Highway billboard located on property condemned for highway expansion was "structure," entitling owner to compensation in eminent domain proceedings, regardless of whether billboard was personal or real property and regardless of whether owner was entitled to receive relocation expenses; billboard owner had statutory right as against owner of property for removal of billboard. Lamar Corp. v. State Hwy. Comm'n, 684 So. 2d 601 (Miss. 1996).

§ 43-37-13. Payments as additives to compensation otherwise provided by law.

Nothing contained in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or damages not in existence immediately prior to July 1, 1972, but such payments shall be considered only as additives to due compensation otherwise provided by law.

SOURCES: Codes, 1942, § 2749-57; Laws, 1972, ch. 525, § 7, eff from and after July 1, 1972.

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

CHAPTER 39

Relocation Assistance

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§ 43-39-1. Title.

This chapter shall be known as the "Relocation Assistance Law."

SOURCES: Codes, 1942, § 2749-71; Laws, 1972, ch. 526, § 1, eff from and after July 1, 1972.

Editor's Note — Laws of 1972, ch. 526, § 15, provides that this chapter supersedes §§ 65-1-93 through 65-1-109, Code of 1972. Section 15 reads as follows:

"SECTION 15. From and after the effective date of this act [July 1, 1972], sections 8023.5-01 through 8023.5-11, inclusive, Mississippi Code of 1942 [Code 1972, §§ 65-1-93 through 65-1-109], shall be superseded by this act. Provided, however, that nothing contained in this act shall in any way affect or apply to any dealings, negotiations or actions commenced prior to the effective date of this act, under sections 8023.5-01 through 8023.5-11, inclusive, Mississippi Code of 1942 [Code 1972, §§ 65-1-93 through 65-1-109]; but all such dealings, negotiations or actions shall be concluded under the provisions of said sections under which commenced, whether such conclusion is before or after the effective date of this act. Said sections 8023.5-01 through 8023.5-11, inclusive, Mississippi Code of 1942 [Code 1972, §§ 65-1-93 through 65-1-109], shall remain in full force and effect after the effective date of this act as to all such dealings, negotiations and actions so commenced prior to the effective date of this act."

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former §§ 65-1-93 through 65-1-109.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former §§ 65-1-93 through 65-1-109.

6. In general.

A property owner who has, in a court of eminent domain, recovered relocation expenses which were included in the verdict, may not again recover for any items proven at the trial below for which has been paid in any subsequent proceeding under Code 1942, §§ 8023.5-01-8023.5-10. Mississippi State Hwy. Comm'n v. Rives, 271 So. 2d 725 (Miss. 1972).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (42 USCS §§ 4601-4655). 33 A.L.R. Fed. 9.

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment § 25.

§ 43-39-3. Declaration of purpose.

The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced by the acquisition of real property by state and local land acquisition programs which are publicly funded in whole or in part. The policy shall be uniform as to (a) relocation payments, (b) advisory assistance, and (c) assurance of availability of standard housing under state or local land acquisition programs which are publicly funded in whole or in part.

SOURCES: Codes, 1942, § 2749-71; Laws, 1972, ch. 526, § 1; Laws, 1996, ch. 445, § 1, eff from and after passage (approved March 29, 1996).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 43-39-5. Definitions.

As used in this chapter:

(a) "Agency" means any department, agency or instrumentality of the state or of a political subdivision of the state, or any department, agency or instrumentality of two (2) or more political subdivisions of the state, or any person who has the authority to acquire property by eminent domain under the laws of this state, that implements a project financed in whole or in part by public funds.

(b) "Person" means any individual, partnership, corporation, or association.

(c) "Displaced person" means, except as otherwise provided in this paragraph (c), any person who moves from real property, or moves his personal property from real property, as a direct result of a written notice of intent to acquire or the acquisition of other real property in whole or in part for a program or project undertaken by an agency with public financial assistance; or real property on which such person is a residential tenant or conducts a small business, a farm operation or a business as defined in this section, as a direct result of rehabilitation, demolition or such other displacing activity as the displacing agency may prescribe, under a program or project undertaken by a displacing agency with public financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and solely for the purposes of Sections 43-39-7 and 43-39-13, Mississippi Code of 1972, any person who moves from real property or moves his personal property from real property as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a displacing agency with public financial assistance; or as a result of rehabilitation, demolition or such other displacing activity as the displacing agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a displacing agency with public financial assistance where the displacing agency determines that such displacement is permanent. In the case of a partial acquisition, the displacing agency shall make the determination whether the person is displaced.

The term "displaced person" does not include a person who has been determined, according to criteria established by the head of the agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this title, nor, in any case in which the displacing agency acquired property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(d) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(i) For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing or marketing of products, commodities or any other personal property;

(ii) For the sale of services to the public;

(iii) By a nonprofit organization; or

(iv) For the purposes of subsection (1) of Section 43-39-7, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(e) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(f) "Comparable replacement dwelling" means any dwelling that is decent, safe and sanitary; adequate in size to accommodate the occupants; within the financial means of the displaced person; functionally equivalent; in an area not subject to unreasonable, adverse, environmental conditions; and in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

(g) "Displacing agency" means the state, a state agency or an authorized political subdivision, or any person carrying out a program or project with public financial assistance which causes a person to be a displaced person.

(h) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(i) "Lead agency" means the Mississippi Department of Transportation.

SOURCES: Codes, 1942, § 2749-72; Laws, 1972, ch. 526, § 2; Laws, 1989, ch. 421, § 1; Laws, 1996, ch. 445, § 2, eff from and after passage (approved March 29, 1996).

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

Application of this section to the acquisition of real property for use in federal aid projects, see § 43-37-2.

Mississippi Department of Transportation generally, see §§ 65-1-1 et seq.

ATTORNEY GENERAL OPINIONS

A board of supervisors has the authority to cremate the remains of a pauper or stranger and has the statutory requirement to decently bury the residue after cremation. Meadows, Dec. 5, 1997, A.G. Op. #97-0765.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 43-39-7. Relocation payments; moving expense and dislocation allowances; fixed payments.

(1) If a displacing agency acquires real property for public use, it shall make fair and reasonable relocation payments to displaced persons and businesses as required by this chapter for:

(a) Actual reasonable expenses in moving himself, his family, business, farm operation or other personal property;

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the agency;

(c) Actual reasonable expenses in searching for a replacement business or farm; and

(d) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site in accordance with criteria to be established by the displacing agency, but not to exceed the maximum amount of relocation payments established by applicable federal regulations.

(2) Any displaced person eligible for payments under subsection (1) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (1) of this section may receive an expense and dislocation allowance which shall be determined according to a schedule established by the displacing agency.

(3) Any displaced person eligible for payments under subsection (1) of this section, who is displaced from his place of business or from his farm operation and who is eligible under criteria established by the displacing agency may also qualify for the payment authorized by this subsection. Such payment shall consist of a fixed payment in an amount to be determined by the agency, except that such payment shall not be less than One Thousand Dollars ($1,000.00) nor more than the maximum amount of relocation payments established by applicable federal regulations. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

SOURCES: Codes, 1942, § 2749-73; Laws, 1972, ch. 526, § 3; Laws, 1989, ch. 421, § 2; Laws, 1996, ch. 445, § 3; Laws, 2013, ch. 468, § 2, eff from and after passage (approved March 26, 2013.)

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Although the claimants did not waive and were entitled to relocation expenses in connection with the relocation of their home from property condemned by the defendant agency, they were not entitled to such expenses at the late date that they sought them where they failed to follow the procedures required by § 43-39-17. Brown v. Mississippi Transp. Comm'n, 749 So. 2d 948 (Miss. 1999).

Where the Department of Transportation acquired property on which a two pole billboard was located, the owner of the billboard was entitled to payment for a new monopole billboard as the two pole billboard could not be relocated due to a zoning ordinance which required all new billboards to be monopole and the zoning board would not allow the billboard to be "grandfathered" in. Mississippi DOT v. B & G Outdoor, 722 So. 2d 1273 (Miss. Ct. App. 1998).

Highway billboard located on property condemned for highway expansion was "structure," entitling owner to compensation in eminent domain proceedings, regardless of whether billboard was personal or real property and regardless of whether owner was entitled to receive relocation expenses; billboard owner had statutory right as against owner of property for removal of billboard. Lamar Corp. v. State Hwy. Comm'n, 684 So. 2d 601 (Miss. 1996).

Statute providing for award of relocation expenses in eminent domain proceeding applies in situations were condemned personal property is not also a structure which cannot be moved without destruction. Lamar Corp. v. State Hwy. Comm'n, 684 So. 2d 601 (Miss. 1996).

Highway billboard owner's right to remove billboard did not deprive owner of right to have billboard acquired by state or to be compensated when its interest would adversely affected by acquisition of land for highway expansion. Lamar Corp. v. State Hwy. Comm'n, 684 So. 2d 601 (Miss. 1996).

2.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

Although Code 1942, § 8023.5-04 makes provision for a property owner's recovery of relocation expenses administratively, this does not preclude him from establishing his relocation expenses in a court of eminent domain and recovering them under the provisions of Code 1942, § 8023.5-08. Mississippi State Hwy. Comm'n v. Rives, 271 So. 2d 725 (Miss. 1972).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

Am Jur. 9A Am. Jur. Legal Forms 2d, Housing Laws and Urban Redevelopment, §§ 138:45, 138:47 (claim for relocation payment).

§ 43-39-9. Additional payments; elements thereof; eligibility therefor.

(1) In addition to payments otherwise authorized by this chapter, such displacing agency shall make an additional payment not in excess of the maximum amount of relocation payments established by applicable federal

regulations to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than ninety (90) days before the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(a) The amount, if any, which when added to the acquisition cost of the dwelling acquired, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment, and available on the private market. All determinations required to carry out this paragraph shall be determined by regulations issued pursuant to Section 43-39-17;

(b) The amount, if any, which will compensate the displaced person for any increased interest costs and other debt service costs which the person is required to pay for financing the acquisition of any such comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than ninety (90) days before the initiation of negotiations for the acquisition of the dwelling. Payment determinations shall be in accordance with regulations issued pursuant to Section 43-39-17; and

(c) Reasonable expenses incurred by the displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe and sanitary replacement dwelling within one (1) year after the date on which he receives final payment from the displacing agency for the acquired dwelling, or the date on which the displacing agency's obligation under Section 43-39-13, is met, whichever is the later date, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one (1) year of such date.

SOURCES: Codes, 1942, § 2749-74; Laws, 1972, ch. 526, § 4; Laws, 1980, ch. 468, § 1; Laws, 1989, ch. 421, § 3; Laws, 1996, ch. 445, § 4; Laws, 2013, ch. 468, § 3, eff from and after passage (approved March 26, 2013.)

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

Additional payments to persons not eligible under this section, see § 43-39-11.

Authorization for agency to exceed maximum amounts which may be paid out under this section, see § 43-39-16.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

Am Jur. 9A Am. Jur. Legal Forms 2d, Housing Laws and Urban Redevelopment §§ 138:45, 138:47 (claim for relocation payment).

§ 43-39-11. Additional payments to person not eligible under § 43-39-9.

(1) In addition to amounts otherwise authorized by this chapter, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under Section 43-39-9, which dwelling was actually and lawfully occupied by the displaced person for not less than ninety (90) days immediately prior to the initiation of negotiations for acquisition of such dwelling, or in any case in which displacement is not a direct result of acquisition, such other event as the head of the agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed forty-two (42) months, a comparable replacement dwelling, but not to exceed the maximum amount of relocation payments established by applicable federal regulations. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(2) Any person eligible for a payment under subsection (1) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (1).

SOURCES: Codes, 1942, § 2749-75; Laws, 1972, ch. 526, § 5; Laws, 1980, ch. 468, § 2; Laws, 1989, ch. 421, § 4; Laws, 1996, ch. 445, § 5; Laws, 2013, ch. 468, § 4, eff from and after passage (approved March 26, 2013.)

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

Authorization for agency to exceed maximum amounts which may be paid out under this section, see § 43-39-16.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

Am Jur. 9A Am. Jur. Legal Forms 2d, Housing Laws and Urban Redevelopment §§ 138:45, 138:47 (claim for relocation payment).

§ 43-39-12. Illegal aliens ineligible to receive relocation assistance; exception for extremely unusual hardship; adoption of rules and regulations.

(1) Except as provided in subsection (2) of this section, a displaced person shall not be eligible to receive relocation payments or any other assistance under this chapter if the displaced person is an alien not lawfully present in the United States.

(2) If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (1) of this section would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this chapter if the displaced person would be eligible for the assistance but for subsection (1) of this section.

(3) The Mississippi Transportation Commission shall adopt such rules and regulations as may be necessary to carry out the provisions of this section and in order to comply with federal law.

SOURCES: Laws, 2000, ch. 448, § 1, eff from and after July 1, 2000.

Cross References — Mississippi Transportation Commission, see § 65-1-3.

§ 43-39-13. Relocation assistance advisory programs.

(1) Programs or projects undertaken by a displacing agency with public financial assistance shall be planned in a manner that recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses and farm operations, and which provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(2) The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (3) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make advisory services available to such person.

(3) Each relocation assistance advisory program required by subsection (2) of this section shall include such measures, facilities or services as may be necessary or appropriate in order to determine and make timely recommendations on the needs and preferences, if any, of displaced persons for relocation assistance; provide current and continuing information on the availability,

sales prices and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations; assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of a major disaster as defined in Section 102(2) of the Disaster Relief Act of 1974, a national emergency declared by the President or any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by the person constitutes a substantial danger to the health or safety of the person; assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location; supply information concerning other federal and state programs which may be of assistance to displaced persons; supply technical assistance to such persons in applying for assistance under such programs; and provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(4) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other federal, state or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(5) In any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency.

SOURCES: Codes, 1942, § 2749-76; Laws, 1972, ch. 526, § 6; Laws, 1989, ch. 421, § 5; Laws, 1996, ch. 445, § 6, eff from and after passage (approved March 29, 1996).

Editor's Note — The "Mississippi Vulnerable Adult Act," referred to in this section, was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357. See § 43-47-1.

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

Right to additional payments if replacement dwelling is purchased and occupied within one year of receiving final payment or displacing agency meeting its obligations under this section, see § 43-39-9.

Federal Aspects — Section 102(2) of the Disaster Relief Act of 1974 is codified at 42 USCS § 5122(2).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

Am Jur. 79 Am. Jur. 2d, Welfare Laws § 61.

13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 1 (complaint in federal court — class action — by residents in slum clearance area to enjoin displacement until adequate relocation facilities provided).

§ 43-39-15. Agency to assure availability of suitable dwellings for displaced persons.

Whenever the acquisition of real property for a program or project will result in the displacement of any person on or after July 1, 1972, the displacing agency shall assure that within a reasonable period of time prior to displacement, there will be available comparable, decent, safe and sanitary replacement housing which is within the financial means of such displaced persons. Regulations issued pursuant to Section 43-39-17 may prescribe situations when these assurances may be waived.

SOURCES: Codes, 1942, § 2749-77; Laws, 1972, ch. 526, § 7; Laws, 1989, ch. 421, § 6, eff from and after passage (approved March 20, 1989).

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

Am Jur. 13A Am. Jur. Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 1 (complaint in federal court — class action — by residents in slum clearance area to enjoin displacement until adequate relocation facilities provided).

§ 43-39-16. Agency to provide replacement dwellings if none available; persons not required to move if replacement dwellings unavailable.

(1) If a program or project undertaken by an agency with public financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under Sections 43-39-9 and 43-39-11, on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the agency issues.

(2) No person shall be required to move from his dwelling on account of any program or project undertaken by a displacing agency with public financial assistance unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.

SOURCES: Laws, 1989, ch. 421, § 7; Laws, 1996, ch. 445, § 7, eff from and after passage (approved March 29, 1996).

§ 43-39-17. Duties and responsibilities of head of lead agency; rules and regulations.

(1) The head of the lead agency shall:

(a) Develop and issue such regulations as may be necessary to carry out the provisions of this chapter;

(b) Ensure that relocation assistance activities under this chapter are coordinated with low-income housing assistance programs or projects by a state agency with federal financial assistance;

(c) Monitor, in coordination with other state agencies, the implementation and enforcement of this chapter; and

(d) Perform such other duties as may be necessary to carry out the provisions of this chapter.

(2) The head of the lead agency shall adopt rules and regulations and establish such procedures as he may determine as necessary to assure that:

(a) The payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(b) A displaced person who makes proper application for a payment authorized for such person by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(c) Any person aggrieved may have his application reviewed by the state agency having authority over such program or project.

SOURCES: Codes, 1942, § 2749-78; Laws, 1972, ch. 526, § 8; Laws, 1989, ch. 421, § 8, eff from and after passage (approved March 20, 1989).

Cross References — Lead agency as meaning Mississippi Department of Transportation, see § 43-39-5.

JUDICIAL DECISIONS

1. In general.

Although the claimants did not waive and were entitled to relocation expenses in connection with the relocation of their home from property condemned by the defendant agency, they were not entitled to such expenses at the late date that they sought them where they failed to follow the procedures required by this section. Brown v. Mississippi Transp. Comm'n, 749 So. 2d 948 (Miss. 1999).

Under Relocation Assistance Law, Code 1972 §§ 43-39-1 et seq., amount of relocation assistance is determined in proceedings separate and apart from eminent domain trial for land taken, any landowner aggrieved by amount offered as such assistance may seek review before appropriate administrative agency in accordance with Code 1972 § 43-39-17(1)(c), and landowner aggrieved by final administration determination may thereafter seek judicial review under Code 1972 § 43-39-25; hence, where condemnor and condemnee were unable to agree upon replacement housing damages, issue was administrative matter not subject to trial in eminent domain proceeding for taking of land involved. Gordon v. Watkins, 353 So. 2d 755 (Miss. 1977).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 43-39-19. Agencies may contract for service or work through federal or local organizations.

In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the agency may enter into contracts with any individual, firm, association or corporation for services in connection with those programs, or may carry out its functions under this chapter through any federal agency or any department or instrumentality of the state or its political subdivisions having an established organization for conducting relocation assistance programs.

SOURCES: Codes, 1942, § 2749-79; Laws, 1972, ch. 526, § 9, eff from and after July 1, 1972.

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 43-39-21. Availability of funds.

Funds appropriated or otherwise available to any agency for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this chapter as applied to that program or project.

SOURCES: Codes, 1942, § 2749-80; Laws, 1972, ch. 526, § 10, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 43-39-23. Relocation payments not to be considered as income or resources.

Except as otherwise provided in the Federal Uniform Relocation Act, no payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of the state's personal income tax law, corporation tax law, or other tax law. Except for any law providing low-income housing assistance, payments shall not be considered as income or resources of any recipient of public assistance and the payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

SOURCES: Codes, 1942, § 2749-81; Laws, 1972, ch. 526, § 11; Laws, 1989, ch. 421, § 9, eff from and after passage (approved March 20, 1989).

Federal Aspects — The Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs is codified at 42 USCS §§ 4601 et seq.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USCS §§ 4601-4655). 33 A.L.R. Fed. 9.

§ 43-39-25. Appeal from determination as to eligibility.

Any person or business concern aggrieved by the determination of a displacing agency concerning eligibility for relocation payments authorized by this chapter shall have the right of appeal to the court that would have had jurisdiction if the cause were in eminent domain from such decision at any time within twenty (20) days after actual notice to the aggrieved party. The appeal shall be heard the same as provided by law in eminent domain causes. Nothing in this chapter shall prohibit any aggrieved party from exercising any right or remedy available to him under state law with respect to any action of a state agency in carrying out this chapter.

SOURCES: Codes, 1942, § 2749-82; Laws, 1972, ch. 526, § 12; Laws, 1996, ch. 445, § 8, eff from and after passage (approved March 29, 1996).

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

Individual's claim for unemployment compensation who owes child support obligations, and the workers' compensation commission's duty to notify the child support enforcement agency of the individual's eligibility for benefits, see § 71-5-516.

JUDICIAL DECISIONS

1. In general.

Under Relocation Assistance Law, Code 1972 §§ 43-39-1 et seq., amount of relocation assistance is determined in proceedings separate and apart from eminent domain trial for land taken, any landowner aggrieved by amount offered as such assistance may seek review before appropriate administrative agency in accordance with Code 1972 § 43-39-17(1)(c), and landowner aggrieved by final administration determination may thereafter seek judicial review under Code 1972 § 43-39-25; hence, where condemnor and condemnee were unable to agree upon replacement housing damages, issue was administrative matter not subject to trial in eminent domain proceeding for taking of land involved. Gordon v. Watkins, 353 So. 2d 755 (Miss. 1977).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 43-39-27. Payments as additives to compensation otherwise provided by law.

Nothing contained in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or damages not in existence immediately prior to July 1, 1972, but such payments shall be considered only as additives to due compensation otherwise provided by law.

SOURCES: Codes, 1942, § 2749-83; Laws, 1972, ch. 526, § 13, eff from and after July 1, 1972.

Cross References — Eminent domain proceedings, see §§ 11-27-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use].
II. Under Former Law.
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former Law.

6. In general.

Although Code 1942, § 8023.5-04 makes provision for a property owner's recovery of relocation expenses administratively, this does not preclude him from establishing his relocation expenses in a court of eminent domain and recovering them under the provisions of Code 1942, § 8023.5-08. Mississippi State Hwy. Comm'n v. Rives, 271 So. 2d 725 (Miss. 1972).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 43-39-29. Action of ejectment when project in danger of being delayed; authorization; notice requirements.

(1) The displacing agency is authorized, if the program or project is in danger of being delayed, to bring a civil action seeking ejectment as relief in justice court, chancery court, circuit or county court, or special court of eminent

domain where the agency is legally entitled to the possession of the property sued for and demanded.

(2) No person previously lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or move his business or farm without at least ninety (90) days advance written notice, after initiation of negotiations for the parcel, followed by a final written thirty-day notice to vacate after the displacing agency is legally entitled to possession.

SOURCES: Laws, 1996, ch. 445, § 9, eff from and after passage (approved March 29, 1996).

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 25, 32 et seq.

CHAPTER 41

Emergency and Disaster Assistance [Repealed]

Article 1. Financial Assistance [Repealed]
Article 3. Temporary Housing [Repealed] 43-41-301
Article 5. Local Disaster Emergency Grant and Loan Fund [Repealed] 43-41-501
Article 7. Financial Assistance to State Agencies. [Repealed]

Editor's Note — Former Chapter 41 of Title 43, §§ 43-41-1 through 43-41-505, provided for financial and temporary housing assistance for disaster emergency victims. For present similar provisions, see §§ 33-15-201 through 33-15-223.

ARTICLE 1.

FINANCIAL ASSISTANCE [REPEALED].

§§ 43-41-1 and 43-41-3. Repealed.

Repealed by Laws, 2004, ch. 405, § 14 effective July 1, 2004.

§ 43-41-1. [Laws, 1978, ch. 331, § 1, eff from and after July 1, 1978.]

§ 43-41-3. [Laws, 1978, ch. 331, § 2; Laws, 1980, ch. 491, § 27; Laws, 1989, ch. 474, § 1, eff from and after July 1, 1989.]

Editor's Note — Former § 43-41-1 was entitled: "Legislative declaration of purpose."

Former § 43-41-3 was entitled: "Definitions."

§ 43-41-5. Repealed.

Repealed by Laws, 1984, ch. 488, § 335, eff from and after July 1, 1984.

[Laws, 1978, ch. 331, § 3; Laws, 1980, ch. 491, § 28]

Editor's Note — Former § 43-41-5 established the disaster emergency funding board, and established a revolving fund to expedite aid to disaster victims.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall effect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

§§ 43-41-7 through 43-41-15. Repealed.

Repealed by Laws, 2004, ch. 405, § 14 eff from and after July 1, 2004.

§ 43-41-7. [Laws, 1978, ch. 331, § 4; Laws, 1980, ch. 491, § 29; Laws, 1989, ch. 474, § 2, eff from and after July 1, 1989.]

§ 43-41-9. [Laws, 1978, ch. 331, § 5(1); Laws, 1980, ch. 491, § 30, eff from and after passage (approved May 9, 1980).]

§ 43-41-11. [Laws, 1978, ch. 331, § 5(2); Laws, 1980, ch. 491, § 31; Laws, 1989, ch. 474, § 3, eff from and after July 1, 1989.]

§ 43-41-13. [Laws, 1978, ch. 331, § 5(3); Laws, 1989, ch. 474, § 4; Laws, 2000, ch. 413, § 4; Laws, 2001, ch. 341, § 4, eff from and after passage (approved Mar. 11, 2001.)]

§ 43-41-15. [Laws, 1978, ch. 331, § 5(4); Laws, 1989, ch. 474, § 5, eff from and after July 1, 1989.]

Editor's Note — Former § 43-41-7 was entitled: "Presidential declaration of emergency; power of governor to accept assistance."

Former § 43-41-9 was entitled: "Filing request for federal assistance."

Former § 43-41-11 was entitled: "Administration of grant program."

Former § 43-41-13 was entitled: "Amount of grants."

Former § 43-41-15 was entitled: "Limitations of time for requesting assistance."

§ 43-41-17. Repealed.

Repealed by Laws, 1984, ch. 488, § 335, eff from and after July 1, 1984.
[Laws, 1978, ch. 331, § 6]

Editor's Note — Former § 43-41-17 provided for the reimbursement of state agencies for certain expenses for emergency or disaster related duties.

ARTICLE 3.

TEMPORARY HOUSING
[REPEALED].

SEC.
43-41-301 through 43-41-321. Repealed

§§ 43-41-301 through 43-41-321. Repealed.

Repealed by Laws, 2004, ch. 405, § 14 eff July 1, 2004.

§§ 43-41-301 through 43-41-321. [Laws, 1978, ch. 330, § 1 — 9 eff from and after July 1, 1978.

Editor's Note — Former §§ 43-41-301 through 43-41-321 referred to Temporary Housing.

ARTICLE 5.

LOCAL DISASTER EMERGENCY GRANT AND LOAN FUND
[REPEALED].

SEC.
43-41-501 and 43-41-503. Repealed.

43-41-505. Repealed
43-41-507 through 43-41-515. Repealed.

§§ 43-41-501 and 43-41-503. Repealed.

Repealed by Laws, 1984, ch. 488, § 336, eff from and after July 1, 1984.

§ 43-41-501. [Laws, 1980, ch. 435, § 1]

§ 43-41-503. [Laws, 1980, ch. 435, § 2]

Editor's Note — Former § 43-41-501 authorized the utilization of appropriated funds to assist local governing authorities in restoration of property destroyed as result of enemy attack, technological disaster or natural disaster.

Former § 43-41-503 made the Commission of Budget and Accounting the sole administrator of certain emergency appropriations.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

§ 43-41-505. Repealed.

Repealed by Laws, 2004, ch. 405, § 14 eff July 1, 2004.

§ 43-41-505. [Laws, 1980, ch. 435, § 3; Laws, 1984, ch. 488, § 210; Laws, 1989, ch. 532, § 65, eff from and after July 1, 1989.]

Editor's Note — Former § 43-41-505 was entitled: "Establishment of fund; conditions as to loans and their repayment."

§§ 43-41-507 through 43-41-515. Repealed.

Repealed by Laws, 1984, ch. 488, § 336, eff from and after July 1, 1984.

§ 43-41-507. [Laws, 1980, ch. 435, § 4]

§ 43-41-509. [Laws, 1980, ch. 435, § 5]

§ 43-41-511. [Laws, 1980, ch. 435, § 6]

§ 43-41-513. [Laws, 1980, ch. 435, § 7]

§ 43-41-515. [Laws, 1980, ch. 435, § 8]

Editor's Note — Former § 43-41-507 provided a time limitation on loan applications.

Former § 43-41-509 required county and municipal authorities to maintain certain records.

Former § 43-41-511 limited the total expenditure of state funds under the provisions of this article.

Former § 43-41-513 authorized borrowing by state bond commission to carry out the purposes of this article.

Former § 43-41-515 authorized the commission to adopt of rules and regulations.

ARTICLE 7.

FINANCIAL ASSISTANCE TO STATE AGENCIES [REPEALED].

§§ 43-41-701 through 43-41-721. Repealed.

Repealed by Laws, 1984, ch. 488, § 337, eff from and after July 1, 1984.
§ 43-41-701. [Laws, 1980, ch. 447, § 1]
§ 43-41-703. [Laws, 1980, ch. 447, § 2]
§ 43-41-705. [Laws, 1980, ch. 447, § 3]
§ 43-41-707. [Laws, 1980, ch. 447, § 4]
§ 43-41-709. [Laws, 1980, ch. 447, § 5]
§ 43-41-711. [Laws, 1980, ch. 447, § 6]
§ 43-41-713. [Laws, 1980, ch. 447, § 7]
§ 43-41-715. [Laws, 1980, ch. 447, § 8]
§ 43-41-717. [Laws, 1980, ch. 447, § 9]
§ 43-41-719. [Laws, 1980, ch. 447, § 10]
§ 43-41-721. [Laws, 1980, ch. 447, § 11]

Editor's Note — Former §§ 43-41-701 through 43-41-721 pertained to financial assistance to state agencies for disaster and emergency assistance.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

CHAPTER 43

Administration of Social Security Funds

Sec.

43-43-1. Legislative intent.
43-43-3. Appropriations of Title XX monies.
43-43-5. Purchase of service contracts; advance of portion of cost of services.
43-43-7. Purchase of service budget request; contents.
43-43-9. Requirement of authorization before making assessment for services.

§ 43-43-1. Legislative intent.

It is the intent of the Mississippi Legislature to strengthen legislative oversight over the administration of federal funds provided under Title XX of the Social Security Act of 1935, as amended, originally enacted as Public Law 93-647.

SOURCES: Laws, 1979, ch. 505, § 1, eff from and after Jan 1, 1980.

Federal Aspects — Title XX of the Social Security Act of 1935, as amended, see 42 USCS §§ 1397 et seq.

§ 43-43-3. Appropriations of Title XX monies.

No state agency shall make expenditures of any federal Title XX monies, unless such expenditures are made pursuant to specific appropriations by the Legislature. In appropriating expenditures for social services as provided under Title XX, the Legislature shall specify the maximum amounts of funds to be expended by source of funds. To the extent not precluded by the terms and conditions under which financial aid is made available by the federal government, the Legislature may establish priorities for the activity being assisted and shall specify the major categories of services to be provided and the maximum amount to be expended in each category.

SOURCES: Laws, 1979, ch. 505, § 2, eff from and after Jan 1, 1980.

Federal Aspects — Title XX of the Social Security Act of 1935, as amended, see 42 USCS §§ 1397 et seq.

§ 43-43-5. Purchase of service contracts; advance of portion of cost of services.

All purchase of service contracts between the State Department of Public Welfare and individuals, associations or corporations other than state agencies shall be for the reimbursement of actual costs incurred in providing services. However, the State Department of Public Welfare in accordance with policy established by the State Board of Public Welfare may advance one-twelfth (1⁄12) of the total estimated cost for providing services under the twelve-month contractual agreement, upon written request of a contractor, to give the contractor a better cash flow. Any funds so advanced shall be withheld from the contract reimbursement payments and in no case shall the final reimbursement payment to the contractor exceed the actual cost incurred in providing services. Any contractor receiving such advance payments shall be strictly liable to ensure that same is adjusted to actual cost, including repayment of excess cash advances if necessary, prior to the final closeout of the purchase of service contract.

SOURCES: Laws, 1979, ch. 505, § 3; Laws, 1988, ch. 382, eff from and after July 1, 1988.

Editor's Note — Section 43-1-1 provides that the term "State Department of Public Welfare" or "State Board of Public Welfare" shall mean the Department of Human Services.

Cross References — Department of Human Services, generally, see §§ 43-1-1 et seq.

§ 43-43-7. Purchase of service budget request; contents.

The State Department of Public Welfare in its purchase of service budget request shall accurately reflect the comprehensive annual services program required under Section 2004 of Title XX. In submitting its annual budget recommendations to the Legislature, the legislative budget office shall include all federal Title XX monies received or anticipated by agencies as a part of the budget request in order to indicate for each budget category the amount of state monies requested, the amount of federal monies anticipated or due, the amount of other nonstate monies requested or anticipated and the total anticipated expenditure from all sources for each respective category. A similar breakdown of funding sources shall be shown for current and preceding fiscal periods. All Title XX purchase of service contracts shall be subject to such auditing procedures by the state department of audit as are applicable to all state agencies. Upon the direction of the Legislative Budget Office, additional evaluation of the Title XX system may be performed by an independent group with expertise in cost analysis and the evaluation of human service programs.

SOURCES: Laws, 1979, ch. 505, § 4; Laws, 1984, ch. 488, § 211, eff from and after July 1, 1984.

Editor's Note — Section 43-1-1 provides that the term "State Department of Public Welfare" or "State Board of Public Welfare" shall mean the Department of Human Services.

Cross References — Auditing procedures used by state department of audit, see §§ 7-7-1 et seq.

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Department of Human Services, generally, see §§ 43-1-1 et seq.

Federal Aspects — Comprehensive annual services program required by Section 2004 of Title XX of the Social Security Act of 1935, as amended, see 42 USCS § 1397c.

§ 43-43-9. Requirement of authorization before making assessment for services.

No state agency shall assess any charges for services provided by such agency under Title XX to any entity or individual, whether the services be administrative in nature or otherwise, unless such charges be specifically authorized both in principle and amount by the Legislature or, when the Legislature is out of session, by the state fiscal management board. All such charges, whether termed administrative charges, license fees, certification fees, user fees or by whatever name denominated, shall be included in the state budget report as prepared by the legislative budget office and shall be identified by source, purpose, amount and authorization. It is the intent of the Legislature that all such charges by an agency shall be reviewed annually by the Legislature to determine the necessity or continuing necessity for such charges and, if such charges are deemed appropriate and necessary, to include such charges in the agency's appropriation bill.

SOURCES: Laws, 1979, ch. 505, § 5; Laws, 1984, ch. 488, § 212, eff from and after July 1, 1984.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross References — Joint Legislative Budget Committee and Legislative Budget Office, generally, see §§ 27-103-101 et seq.

Federal Aspects — Title XX of the Social Security Act, see 42 USCS §§ 1397 et seq.

CHAPTER 45

Adult Protective Services
[Repealed]

§§ 43-45-1 through 43-45-31. Repealed.

Repealed by Laws, 1982, ch. 498, § 17, as amended by Laws, 1985, ch. 490, § 17.

§§ 43-45-1 and 43-45-3. [Laws, 1982, ch. 498, §§ 1, 2; reenacted, Laws, 1985, ch. 490, §§ 1, 2]

§ 43-45-5. [Laws, 1982, ch. 498, § 3; Laws, 1983, ch. 472, § 1; reenacted, Laws, 1985, ch. 490, § 3]

§ 43-45-7. [Laws, 1982, ch. 498, § 4; reenacted, Laws, 1985, ch. 490, § 4]

§ 43-45-9. [Laws, 1982, ch. 498, § 5; Laws, 1983, ch. 472, § 2; reenacted, Laws, 1985, ch. 490, § 5]

§§ 43-45-11 and 43-45-13. [Laws, 1982, ch. 498, §§ 6, 7; reenacted, Laws, 1985, ch. 490, §§ 6, 7]

§ 43-45-15. [Laws, 1982, ch. 498, § 8; Laws, 1983, ch. 472, § 3; reenacted, Laws, 1985, ch. 490, § 8]

§§ 43-45-17 and 43-45-19. [Laws, 1982, ch. 498, §§ 9, 10; reenacted, Laws, 1985, ch. 490, §§ 9, 10]

§ 43-45-21. [Laws, 1982, ch. 498, § 11; Laws, 1983, ch. 472, § 4; reenacted, Laws, 1985, ch. 490, § 11]

§§ 43-45-23 through 43-45-31. [Laws, 1982, ch. 498, §§ 12-16; reenacted, Laws, 1985, ch. 490, §§ 12-16]

Editor's Note — Former §§ 43-45-1 and 43-45-3 provided for the title and purpose of this chapter.

Former § 43-45-5 provided the definitions applicable to this chapter.

Former § 43-45-7 required the reporting to the Department of Public Welfare of adults believed to be in need of protective services and provided immunity from civil and criminal liability for making a report.

Former § 43-45-9 required the department to initiate an evaluation following the receipt of a report of an adult in need of protective services and required local health departments, mental health clinics and other agencies to cooperate.

Former §§ 43-45-11 and 43-45-13 required the Department of Public Welfare to provide protective services upon the consent of the adult, provided procedures applicable when the caretaker of the adult refuses to allow the provision of protective services, and provided for court orders to authorize the providing of protective services.

Former § 43-45-15 provided for court orders authorizing the providing of emergency services to adults in need of protective services.

Former §§ 43-45-17 and 43-45-19 provided for review of court orders finding an adult lacked capacity to consent, and provided for the payment of the costs of providing essential services to adults in need of protective services.

Former § 43-45-21 made it unlawful for a caretaker or other person to abuse, neglect or exploit any adult, required the Department of Public Welfare to report cases of abuse to the district attorney, provided penalties for abuse, and provided that the remedies provided by the section were not exclusive.

Former § 43-45-23 made it the duty of public officials and agencies to cooperate with the Department of Public Welfare and the courts.

Former § 43-45-25 granted civil immunity to Department of Public Welfare personnel in implementing the chapter.

Former § 43-45-27 authorized the department to adopt standards and guidelines to implement the chapter.

Former § 43-45-29 authorized the department to petition the court for appointment of a conservator for an adult, and defined adult.

Former § 43-45-31 provided that the chapter was not to interfere with the religious beliefs of an adult subject to the chapter.

CHAPTER 47

Mississippi Vulnerable Persons Act

Sec.
43-47-1. Short title.
43-47-3. Legislative purpose.
43-47-5. Definitions.
43-47-7. Reporting abuse, neglect, or exploitation; establishment of central register; confidentiality.
43-47-8. Reporting of money, gift, or valuable received or accepted by care facility employees; record maintenance; penalties.
43-47-9. Investigations and evaluations; cooperation of physicians and other health and welfare personnel; contracts with agencies and private physicians.
43-47-11. Protective services plans; interference by caretaker; effect of lack of consent by vulnerable person.
43-47-13. Provision of services to vulnerable person lacking capacity to consent; petition for injunctive relief, hearing, and order; appointment of guardian or conservator.
43-47-15. Provision of services to alleviate an imminent danger; entry upon premises pursuant to court order; immunity from liability of petitioner acting in good faith.
43-47-17. Right to bring motion for review of order.
43-47-18. Sexual battery or fondling of vulnerable person by health care employees or persons in position of trust or authority; penalties.
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43-47-21. Payment for services; orders to provide custody, care, and maintenance.
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43-47-25. Immunity of department employees from liability.
43-47-27. Adoption of standards, procedures, and guidelines.
43-47-29. Appointment of conservator pursuant to Section 93-13-251.
43-47-31. Objection to provision of services on privacy grounds; persons receiving treatment by spiritual means; objection to medical treatment.
43-47-33. Education program.
43-47-35. Implementation of chapter if federal funds become available.
43-47-37. Reporting of abuse and exploitation of patients and residents of care facilities.
43-47-39. Vulnerable Persons Training, Investigation and Prosecution Trust Fund created; purpose; funding.

§ 43-47-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Vulnerable Persons Act of 1986."

SOURCES: Laws, 1986, ch. 468, § 1; reenacted, Laws, 1989, ch. 381, § 1; Laws, 2010, ch. 357, § 1, eff from and after July 1, 2010.

Editor's Note — Laws of 1986, ch. 468, § 19, provided that this chapter would stand repealed from and after September 30, 1987. Subsequently, Laws of 1987, ch. 397, § 1, amended Laws of 1986, ch. 468, § 19, extending the repeal date to September 30, 1989. Thereafter, Laws of 1989, ch. 381, reenacted this chapter, and by § 19, repealed Laws of 1987, ch. 397, § 1, which extended the repealer provision.

Cross References — Guardians and conservators, generally, see §§ 93-13-1 et seq.

Protection from Domestic Abuse Law and domestic violence shelters, see §§ 93-21-1 et seq. and 93-21-101 et seq.

Kidnapping vulnerable person, see § 97-3-53.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state civil and criminal elder abuse laws. 113 A.L.R.5th 431.

Practice References. Long-Term Care Advocacy (Matthew Bender).

§ 43-47-3. Legislative purpose.

The purpose of this chapter is to provide for protective services for vulnerable persons in Mississippi who are abused, neglected or exploited.

SOURCES: Laws, 1986, ch. 468, § 2; reenacted, Laws, 1989, ch. 381, § 2; Laws, 2010, ch. 357, § 2, eff from and after July 1, 2010.

ATTORNEY GENERAL OPINIONS

A constable or other law enforcement official does not have the authority to postpone a court ordered eviction when that officer finds a vulnerable adult in an apartment or home on the day of the eviction. Buckner, Oct. 21, 2005, A.G. Op. 05-0492.

§ 43-47-5. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context otherwise requires:

(a) "Abuse" means the commission of a willful act, or the willful omission of the performance of a duty, which act or omission contributes, tends to contribute to, or results in the infliction of physical pain, injury or mental anguish on or to a vulnerable person, the unreasonable confinement of a vulnerable person, or the willful deprivation by a caretaker of services which are necessary to maintain the mental or physical health of a vulnerable person. "Abuse" includes the sexual abuse delineated in Section 43-47-18. "Abuse" does not mean conduct that is a part of the treatment and care of, and in furtherance of the health and safety of, a patient or resident of a care facility, nor shall it mean a normal caregiving action or appropriate display of affection. "Abuse" includes, but is not limited to, a single incident.

(b) "Care facility" means:

(i) Any institution or place for the aged or infirm as defined in, and required to be licensed under, the provisions of Section 43-11-1 et seq.;

(ii) Any long-term care facility as defined in Section 43-7-55;

(iii) Any hospital as defined in, and required to be licensed under, the provisions of Section 41-9-1 et seq.;

(iv) Any home health agency as defined in, and required to be licensed under, the provisions of Section 41-71-1 et seq.;

(v) Any hospice as defined in, and required to be licensed under, the provisions of Chapter 85 of Title 41; and

(vi) Any adult day services facility, which means a community-based group program for adults designed to meet the needs of adults with impairments through individual plans of care, which are structured, comprehensive, planned, nonresidential programs providing a variety of health, social and related support services in a protective setting, enabling participants to live in the community. Exempted from this definition shall be any program licensed and certified by the Mississippi Department of Mental Health and any adult day services program provided to ten (10) or fewer individuals by a licensed institution for the aged or infirm.

(c) "Caretaker" means an individual, corporation, partnership or other organization which has assumed the responsibility for the care of a vulnerable person, but shall not include the Division of Medicaid, a licensed hospital, or a licensed nursing home within the state.

(d) "Court" means the chancery court of the county in which the vulnerable person resides or is located.

(e) "Department" means the Department of Human Services.

(f) "Emergency" means a situation in which:

(i) A vulnerable person is in substantial danger of serious harm, death or irreparable harm if protective services are not provided immediately;

(ii) The vulnerable person is unable to consent to services;

(iii) No responsible, able or willing caretaker, if any, is available to consent to emergency services; and

(iv) There is insufficient time to utilize the procedure provided in Section 43-47-13.

(g) "Emergency services" means those services necessary to maintain a vulnerable person's vital functions and without which there is reasonable belief that the vulnerable person would suffer irreparable harm or death, and may include taking physical custody of the person.

(h) "Essential services" means those social work, medical, psychiatric or legal services necessary to safeguard a vulnerable person's rights and resources and to maintain the physical or mental well-being of the person. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment and protection from exploitation. The words "essential services" shall not include taking a vulnerable person into physical custody without his consent, except as provided for in Section 43-47-15 and as otherwise provided by the general laws of the state.

(i) "Exploitation" means the illegal or improper use of a vulnerable person or his resources for another's profit, advantage or unjust enrichment, with or without the consent of the vulnerable person, and may include actions taken pursuant to a power of attorney. "Exploitation" includes, but is not limited to, a single incident.

(j) "Illegal use" means any action defined under Mississippi law as a criminal act.

(k) "Improper use" means any use without the consent of the vulnerable person, any use with the consent of the vulnerable person if the consent is obtained by undue means, or any use that deprives the vulnerable person of his ability to obtain essential services or a lifestyle to which the vulnerable person has become accustomed and could have otherwise afforded.

(*l*) "Lacks the capacity to consent" means that a vulnerable person, because of physical or mental incapacity, lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including, but not limited to, provisions for health care, food, clothing or shelter. This may be reasonably determined by the department in emergency situations; in all other instances, the court shall make the determination following the procedures in Sections 43-47-13 and 43-47-15 or as otherwise provided by the general laws of the state.

(m) "Neglect" means either the inability of a vulnerable person who is living alone to provide for himself the food, clothing, shelter, health care or other services which are necessary to maintain his mental or physical health, or failure of a caretaker to supply the vulnerable person with the food, clothing, shelter, health care, supervision or other services which a reasonably prudent person would do to maintain the vulnerable person's mental and physical health. "Neglect" includes, but is not limited to, a single incident.

(n) "Protective services" means services provided by the state or other government or private organizations, agencies or individuals which are necessary to protect a vulnerable person from abuse, neglect or exploitation. They shall include, but not be limited to, investigation, evaluation of the need for services and provision of essential services on behalf of a vulnerable person.

(o) "Sexual penetration" shall have the meaning ascribed in Section 97-3-97.

(p) "Undue means" means the use of deceit, power, or persuasion over a vulnerable person resulting in the vulnerable person being influenced to act otherwise than by his own free will or without adequate attention to the consequences.

(q) "Vulnerable person" means a person, whether a minor or adult, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection from abuse, neglect, exploitation or improper sexual contact is impaired due to a mental, emotional, physical or developmental disability or dysfunction, or brain damage or the infirmities of aging. The term "vulnerable person" also includes all residents or patients, regardless of age, in a care facility. The department shall not be prohibited from investigating, and shall have the authority and responsibility to fully investigate, in accordance with the provisions of this chapter, any allegation of abuse, neglect or exploitation regarding a patient in a care facility, if the alleged abuse, neglect or exploitation occurred at a private residence.

SOURCES: Laws, 1986, ch. 468, § 3; reenacted, Laws, 1989, ch. 381, § 3; Laws, 1990, ch. 493, § 1; Laws, 1991, ch. 431 § 1; Laws, 1998, ch. 354, § 1; Laws, 2001, ch. 603, § 1; Laws, 2003, ch. 558, § 1; Laws, 2006, ch. 328, § 1; Laws, 2010, ch. 357, § 3; Laws, 2012, ch. 439, § 1, eff from and after July 1, 2012.

Cross References — State Department of Human Services generally, see §§ 43-1-1 et seq.

Division of Medicaid generally, see §§ 43-13-101 et seq.

Provisions of the Youth Court Act, see §§ 43-21-101 et seq.

Provision that certain reports may be divulged to a physician having before him an adult whom he suspects may be abused, neglected, or exploited, as defined in this section, see § 43-47-7.

Required reporting of abuse and exploitation of patients and residents of care facilities as defined in this section, see § 43-47-37.

Guardians and conservators, generally, see §§ 93-13-1 et seq.

Protection from Domestic Abuse Law and domestic violence shelters, see §§ 93-21-1 et seq. and 93-21-101 et seq.

Kidnapping vulnerable person, see § 97-3-53.

JUDICIAL DECISIONS

1. Indictment.
2. Credibility of witnesses.

1. Indictment.

It was improper to convict defendant of using her mother's money without her consent in violation of the Mississippi Vulnerable Adults Act of 1986, Miss. Code Ann. § 43-47-19 because although the indictment sufficiently informed defendant of the crime and the conduct the grand jury believed constituted the crime, the trial court erroneously issued a jury instruction that materially conflicted with the indictment's language; the wording of the indictment suggested that the grand jury believed defendant's use of the money was improper only if the money was used without the mother's consent, but at trial, the State produced no evidence that defendant had used her mother's money without her consent, and several witnesses testified that she, in fact, had obtained her mother's consent. Decker v. State, — So. 3d —, 2011 Miss. LEXIS 296 (Miss. June 16, 2011), opinion withdrawn by 2011 Miss. LEXIS 324 (Miss. June 30, 2011).

The definition of "neglect" does not include willfulness, and the court erred in not administering the agency's interpretation of the statute and in implying willfulness. Ricks v. Mississippi State Dep't of Health, 719 So. 2d 173 (Miss. 1998).

2. Credibility of witnesses.

Court did not agree with the contention that defendant's conviction of abuse of a vulnerable adult was against the weight of the evidence; a nursing assistant testified to having witnessed defendant abuse the adult, other witnesses found the adult in a frightened state and with a bruise on the hand, and although defendant argued that certain testimony was contradicted, the trial court was in the position to determine the credibility of the witnesses. Walker v. State, 913 So. 2d 411 (Miss. Ct. App. 2005).

ATTORNEY GENERAL OPINIONS

The statute does not prohibit the Department of Human Services from conducting an Adult Protective Service investigation into alleged abuse or neglect of a patient in a care facility if the alleged abuse or neglect occurred at a private residence prior to the patient entering the care facility. Taylor, April 24, 1998, A.G. Op. #98-0232.

The definition of "care facility" in Section 43-47-5 applies for abuse, neglect, and exploitation reporting and investigating purposes regardless of whether a facility that is required to be licensed is so licensed. Brittain, May 2, 2003, A.G. Op. 03-0702.

RESEARCH REFERENCES

Practice References. Long-Term Care Advocacy (Matthew Bender).

§ 43-47-7. Reporting abuse, neglect, or exploitation; establishment of central register; confidentiality.

(1)(a) Except as otherwise provided by Section 43-47-37 for vulnerable persons in care facilities, any person including, but not limited to, the following, who knows or suspects that a vulnerable person has been or is being abused, neglected or exploited shall immediately report such knowledge or suspicion to the Department of Human Services or to the county department of human services where the vulnerable person is located:

(i) Attorney, physician, osteopathic physician, medical examiner, chiropractor or nurse engaged in the admission, examination, care or treatment of vulnerable persons;

(ii) Health professional or mental health professional other than one listed in subparagraph (i);

(iii) Practitioner who relies solely on spiritual means for healing;

(iv) Social worker, family protection worker, family protection specialist or other professional care, residential or institutional staff;

(v) State, county or municipal criminal justice employee or law enforcement officer;

(vi) Human rights advocacy committee or long-term care ombudsman council member; or

(vii) Accountant, stockbroker, financial advisor or consultant, insurance agent or consultant, investment advisor or consultant, financial planner, or any officer or employee of a bank, savings and loan, credit union or any other financial service provider.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

(i) Name, age, race, sex, physical description and location of each vulnerable person alleged to have been abused, neglected or exploited.

(ii) Names, addresses and telephone numbers of the vulnerable person's family members.

(iii) Name, address and telephone number of each alleged perpetrator.

(iv) Name, address and telephone number of the caregiver of the vulnerable person, if different from the alleged perpetrator.

(v) Description of the neglect, exploitation, physical or psychological injuries sustained.

(vi) Actions taken by the reporter, if any, such as notification of the criminal justice agency.

(vii) Any other information available to the reporting person which may establish the cause of abuse, neglect or exploitation that occurred or is occurring.

In addition to the above, any person or entity holding or required to hold a license as specified in Title 73, Professions and Vocations, Mississippi Code of 1972, shall be required to give his, her or its name, address and telephone number in the report of the alleged abuse, neglect or exploitation.

(c) The department, or its designees, shall report to an appropriate criminal investigative or prosecutive authority any person required by this section to report or who fails to comply with this section. A person who fails to make a report as required under this subsection or who, because of the circumstances, should have known or suspected beyond a reasonable doubt that a vulnerable person suffers from exploitation, abuse, neglect or self-neglect but who knowingly fails to comply with this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment. However, for purposes of this subsection (1), any recognized legal financial transaction shall not be considered cause to report the knowledge or suspicion of the financial exploitation of a vulnerable person. If a person convicted under this section is a member of a profession or occupation that is licensed, certified or regulated by the state, the court shall notify the appropriate licensing, certifying or regulating entity of the conviction.

(2) Reports received by law enforcement authorities or other agencies shall be forwarded immediately to the Department of Human Services or the county department of human services. The Department of Human Services shall investigate the reported abuse, neglect or exploitation immediately and shall file a preliminary report of its findings with the Office of the Attorney General within forty-eight (48) hours if immediate attention is needed, or seventy-two (72) hours if the vulnerable person is not in immediate danger and shall make additional reports as new information or evidence becomes available. The Department of Human Services, upon request, shall forward a statement to the person making the initial report required by this section as to what action is being taken, if any.

(3) The report may be made orally or in writing, but where made orally, it shall be followed up by a written report. A person who fails to report or to otherwise comply with this section, as provided herein, shall have no civil or criminal liability, other than that expressly provided for in this section, to any person or entity in connection with any failure to report or to otherwise comply with the requirements of this section.

(4) Anyone who makes a report required by this section or who testifies or participates in any judicial proceedings arising from the report or who participates in a required investigation or evaluation shall be presumed to be acting in good faith and in so doing shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed. However, the immunity

provided under this subsection shall not apply to any suspect or perpetrator of any abuse, neglect or exploitation.

(5) A person who intentionally makes a false report under the provisions of this section may be found liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

(6) The Executive Director of the Department of Human Services shall establish a statewide central register of reports made pursuant to this section. The central register shall be capable of receiving reports of vulnerable persons in need of protective services seven (7) days a week, twenty-four (24) hours a day. To effectuate this purpose, the executive director shall establish a single toll-free statewide phone number that all persons may use to report vulnerable persons in need of protective services, and that all persons authorized by subsection (7) of this section may use for determining the existence of prior reports in order to evaluate the condition or circumstances of the vulnerable person before them. Such oral reports and evidence of previous reports shall be transmitted to the appropriate county department of human services. The central register shall include, but not be limited to, the following information: the name and identifying information of the individual reported, the county department of human services responsible for the investigation of each such report, the names, affiliations and purposes of any person requesting or receiving information which the executive director believes might be helpful in the furtherance of the purposes of this chapter, the name, address, birth date, social security number of the perpetrator of abuse, neglect and/or exploitation, and the type of abuse, neglect and/or exploitation of which there was substantial evidence upon investigation of the report. The central register shall inform the person making reports required under this section of his or her right to request statements from the department as to what action is being taken, if any.

Each person, business, organization or other entity, whether public or private, operated for profit, operated for nonprofit or a voluntary unit of government not responsible for law enforcement providing care, supervision or treatment of vulnerable persons shall conduct criminal history records checks on each new employee of the entity who provides, and/or would provide direct patient care or services to adults or vulnerable persons, as provided in Section 43-11-13.

The department shall not release data that would be harmful or detrimental to the vulnerable person or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

(7) Reports made pursuant to this section, reports written or photographs taken concerning such reports in the possession of the Department of Human Services or the county department of human services shall be confidential and shall only be made available to:

(a) A physician who has before him a vulnerable person whom he reasonably suspects may be abused, neglected or exploited, as defined in Section 43-47-5;

(b) A duly authorized agency having the responsibility for the care or supervision of a subject of the report;

(c) A grand jury or a court of competent jurisdiction, upon finding that the information in the record is necessary for the determination of charges before the grand jury;

(d) A district attorney or other law enforcement official.

Notwithstanding the provisions of paragraph (b) of this subsection, the department may not disclose a report of the abandonment, exploitation, abuse, neglect or self-neglect of a vulnerable person to the vulnerable person's guardian, attorney-in-fact, surrogate decision maker, or caregiver who is a perpetrator or alleged perpetrator of the abandonment, exploitation, abuse or neglect of the vulnerable person.

Any person given access to the names or other information identifying the subject of the report, except the subject of the report, shall not divulge or make public such identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action. Any person who willfully permits the release of any data or information obtained pursuant to this section to persons or agencies not permitted to such access by this section shall be guilty of a misdemeanor.

(8) Upon reasonable cause to believe that a caretaker or other person has abused, neglected or exploited a vulnerable person, the department shall promptly notify the district attorney of the county in which the vulnerable person is located and the Office of the Attorney General, except as provided in Section 43-47-37(2).

SOURCES: Laws, 1986, ch. 468, § 4; reenacted, Laws, 1989, ch. 381, § 4; Laws, 1990, ch. 493, § 3; Laws, 1991, ch. 431 § 2; Laws, 1996, ch. 351, § 2; Laws, 2001, ch. 603, § 2; Laws, 2004, ch. 489, § 7; Laws, 2006, ch. 600, § 9; Laws, 2009, ch. 468, § 1; Laws, 2010, ch. 357, § 4, eff from and after July 1, 2010.

Cross References — Punitive damages, generally, see § 11-1-65.

Investigation by department upon receiving a report of abuse pursuant to this section, see § 43-47-9.

Additional reporting requirements, see § 43-47-37.

Protection from Domestic Abuse Law and domestic violence shelters, see §§ 93-21-1 et seq. and 93-21-101 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. State or municipal liability for invasion of privacy. 87 A.L.R.3d 145.

Standard of proof as to conduct underlying punitive damage awards — modern status. 58 A.L.R.4th 878.

Validity, construction, and application of state statute requiring doctor or other person to report child abuse. 73 A.L.R.4th 782.

Physical examination of child's body for evidence of abuse as violative of Fourth Amendment or as raising Fourth Amendment issue. 93 A.L.R. Fed. 530.

§ 43-47-8. Reporting of money, gift, or valuable received or accepted by care facility employees; record maintenance; penalties.

(1) Any person employed by a care facility or having a professional relationship with a care facility who receives or accepts a gift, money or thing of value in excess of Twenty-five Dollars ($25.00) from a patient or resident of the care facility shall make a written report of the acceptance or receipt of the gift, money or thing of value to the administrator, director or other named highest ranking management employee at the care facility. The report shall be delivered within twenty-four (24) hours of the receipt or acceptance and shall contain the following information:

(a) Name of the person receiving or accepting the money, gift or thing of value;

(b) Name of the patient or resident who gave the money, gift or thing of value;

(c) A detailed description of the gift or thing of value or the amount of money accepted or received; and

(d) Any other information required by the care facility.

(2) The written report shall be maintained by the care facility as part of the permanent record of the patient or resident, and a copy of the report shall be delivered by the administrator, director or other named highest ranking management employee to the patient's or resident's responsible party, or to the next of kin or other contact person identified in the patient's or resident's file if no responsible party has been designated.

(3) Any person who fails to make or deliver a report as required under subsection (1) of this section; or fails to retain a report as part of the patient's or resident's permanent record as required by subsection (2) of this section; or fails to deliver a copy of the report to the patient's or resident's responsible party or other person as required by subsection (2) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

(4) Nothing in this section shall preclude legal proceedings against any person who steals, embezzles or misappropriates the property of a patient or resident or who otherwise exploits such patient or resident.

(5) The care facility shall not be held civilly liable for an employee's failure to make or deliver a report of an incident as required by this section.

SOURCES: Laws, 2003, ch. 558, § 3, eff from and after July 1, 2003.

§ 43-47-9. Investigations and evaluations; cooperation of physicians and other health and welfare personnel; contracts with agencies and private physicians.

(1) Upon receipt of a report pursuant to Section 43-47-7 that a vulnerable person is in need of protective services, the department shall initiate an

investigation and/or evaluation within forty-eight (48) hours if immediate attention is needed, or within seventy-two (72) hours if the vulnerable person is not in immediate danger, to determine whether the vulnerable person is in need of protective services and what services are needed. The evaluation shall include any necessary visits and interviews with the person, and if appropriate, with the alleged perpetrator of the vulnerable person abuse and with any person believed to have knowledge of the circumstances of the case. When a caretaker of a vulnerable person refuses to allow the department reasonable access to conduct an investigation to determine if the vulnerable person is in need of protective services, the department may petition the court for an order for injunctive relief enjoining the caretaker from interfering with the investigation.

(2) The staff and physicians of local health departments, mental health clinics and other public or private agencies, including law enforcement agencies, shall cooperate fully with the department in the performance of its duties. These duties include immediate, in-residence evaluations and medical examinations and treatment where the department deems it necessary. However, upon receipt of a report of abuse, neglect or exploitation of a vulnerable person confined in a licensed hospital or licensed nursing home facility in the state, the department shall immediately refer this report to the proper authority at the State Department of Health for investigation under Section 43-47-37.

Upon a showing of probable cause that a vulnerable person has been abused, a court may authorize a qualified third party to make an evaluation to enter the residence of, and to examine the vulnerable person. Upon a showing of probable cause that a vulnerable person has been financially exploited, a court may authorize a qualified third party, also authorized by the department, to make an evaluation, and to gain access to the financial records of the vulnerable person.

(3) The department may contract with an agency or private physician for the purpose of providing immediate, accessible evaluations in the location that the department deems most appropriate.

SOURCES: Laws, 1986, ch. 468, § 5; reenacted, Laws, 1989, ch. 381, § 5; Laws, 1990, ch. 493, § 4; Laws, 1991, ch. 431 § 3; Laws, 2001, ch. 603, § 3; Laws, 2010, ch. 357, § 5, eff from and after July 1, 2010.

Cross References — Division of Medicaid, see §§ 43-13-101 et seq.

Provision for determination whether a vulnerable adult is financially capable of paying for services, at time of evaluation of case pursuant to this section, see § 43-47-21.

Investigation of reports of abuse filed pursuant to § 43-47-9, see § 43-47-37.

RESEARCH REFERENCES

ALR. Physical examination of child's body for evidence of abuse as violative of Fourth Amendment or as raising Fourth Amendment issue. 93 A.L.R. Fed. 530.

§ 43-47-11. Protective services plans; interference by caretaker; effect of lack of consent by vulnerable person.

(1) If, pursuant to an investigation instituted pursuant to Section 43-47-7, the department determines that a vulnerable person is in need of protective services, it shall prepare a plan of services, reviewing that plan with the vulnerable person and obtaining his consent in writing.

(2) When a caretaker of a vulnerable person who consents to the receipt of protective services refuses to allow the provision of such services to the vulnerable person, the department may petition the court for an order for injunctive relief enjoining the caretaker from interfering with the provision of protective services to the vulnerable person.

(3) If a vulnerable person does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided, except as indicated in Section 43-47-13.

SOURCES: Laws, 1986, ch. 468, § 6; reenacted, Laws, 1989, ch. 381, § 6; Laws, 1990, ch. 493, § 5; Laws, 2010, ch. 357, § 6, eff from and after July 1, 2010.

Cross References — Provision that the department shall proceed pursuant to this section and § 43-47-13 if it determines that a vulnerable adult remains in need of protective services after receiving emergency and/or protective services to alleviate an imminent danger, see § 43-47-15.

Plan of services pursuant to report filed under § 43-47-7, see § 43-47-37.

Guardians and conservators, generally, see §§ 93-13-1 et seq.

Protection from Domestic Abuse Law and domestic violence shelters, see §§ 93-21-1 et seq. and 93-21-101 et seq.

§ 43-47-13. Provision of services to vulnerable person lacking capacity to consent; petition for injunctive relief, hearing, and order; appointment of guardian or conservator.

(1) Every reasonable effort shall be made to secure the consent and participation of the vulnerable person in an evaluation and resolution of the need for protective services. If those efforts fail and if the department has reasonable cause to believe that a vulnerable person is being abused, neglected or exploited and lacks the capacity to consent to protective services, then the department may petition the court for an order for injunctive relief authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable person is in need of protective services and lacks the capacity to consent to them.

(2) The court shall set the case for hearing within fourteen (14) days after the filing of the petition. The vulnerable person must receive at least five (5) days notice of the hearing. Where good cause is shown, the court may direct that a shorter notice be given. The vulnerable person has the right to be present and represented by counsel at the hearing. If the person, in the determination of the court, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem. If the person is indigent, the cost of representation shall be borne by the department or by the court.

(3) If, at the hearing, the court finds by clear and convincing evidence that the vulnerable person is in need of protective services and lacks the capacity to consent to those services, the court may issue an order relative thereto. This order may include the designation of an individual, organization or agency to be responsible for the performing or obtaining of essential services on behalf of the vulnerable person or otherwise consenting to protective services in his behalf. The order may provide for protective services for a period not to exceed eighteen (18) months, at which time the vulnerable person's need for protective services may be reviewed by the department filing a petition requesting such review with the court. Should the court determine that the vulnerable person is in further need of protective services, it may order the provision of such protective services as provided herein.

(4) The court may appoint a guardian or conservator for the vulnerable person, but the court shall not appoint the department as a guardian of the vulnerable person. No vulnerable person may be committed to a mental health facility under this chapter. However, nothing contained herein shall prohibit the filing of petitions under other applicable provisions of the laws of this state.

SOURCES: Laws, 1986, ch. 468, § 7; reenacted, Laws, 1989, ch. 381, § 7; Laws, 2010, ch. 357, § 7, eff from and after July 1, 2010.

Cross References — Incorporation of provisions of this section into definitions of certain terms for the purposes of this chapter, see § 43-47-5.

Provision that, except as indicated in this section, protective services will not be provided to a vulnerable adult who does not consent to such services, see § 43-47-11.

Provision that the department shall proceed pursuant to this section and § 43-47-11 if it determines that a vulnerable adult remains in need of protective services after receiving emergency and/or protective services to alleviate an imminent danger, see § 43-47-15.

Guardians and conservators, generally, see §§ 93-13-1 et seq.

Protection from Domestic Abuse Law and domestic violence shelters, see §§ 93-21-1 et seq. and 93-21-101 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. Pl & Pr Forms (Rev), Guardian and Ward, Forms 11-193 (appointment and qualification of guardian).

9 Am. Jur. Legal Forms 2d, Guardian and Ward §§ 133.10-133.43 (appointment of guardian).

CJS. 39 C.J.S., Guardian and Ward §§ 10 et seq.

Practice References. Long-Term Care Advocacy (Matthew Bender).

§ 43-47-15. Provision of services to alleviate an imminent danger; entry upon premises pursuant to court order; immunity from liability of petitioner acting in good faith.

(1) The department shall have the authority to provide immediate medical care, food, clothing, heat, shelter, supervision or other essential services in the absence of consent if it is determined that:

(a) The vulnerable person is in imminent danger of death or irreparable harm;

(b) Provision of emergency and/or protective services will alleviate the endangerment; and

(c) No other statutory or otherwise appropriate remedy is immediately available.

(2) Within forty-eight (48) hours, excluding Saturdays, Sundays and legal holidays, the department shall petition the court for an order for injunctive relief authorizing the provision of emergency services.

(3) Upon petition of the Commissioner of Public Welfare, the court may order the provision of emergency services to a vulnerable person after finding that there is reasonable cause to believe that:

(a) The vulnerable person lacks the capacity to consent and that he is in need of protective services;

(b) An emergency exists; and

(c) No other person authorized by law or order to give consent is available and willing to arrange for emergency services.

If there is reasonable cause to believe that the conditions listed above exist and no other custodian is available, then upon a written petition for emergency services filed by the department, the court may issue an order for injunctive relief for the department to provide emergency services to a vulnerable person.

(4) The petition for emergency services shall set forth the name, address and authority of the petitioners; the name, age and residence of the vulnerable person; the nature of the emergency; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (1) of this section; and facts showing petitioner's attempts to obtain the vulnerable person's consent to the services.

(5) If the provision of emergency and/or protective services alleviates the imminent danger of death or irreparable harm and the department has reasonable cause to believe that the vulnerable person remains in need of protective services, the department shall proceed according to Sections 43-47-11 and 43-47-13.

(6) Where it is necessary to enter a premises without the vulnerable person's consent after obtaining a court order in compliance with subsection (3) of this section, the representative of the petitioner shall do so.

(7) No petitioner shall be held liable in any action brought by the vulnerable person if the petitioner acted in good faith.

SOURCES: Laws, 1986, ch. 468, § 8; reenacted, Laws, 1989, ch. 381, § 8; Laws, 2010, ch. 357, § 8, eff from and after July 1, 2010.

Cross References — Incorporation of provisions of this section into definitions of certain terms for the purposes of this chapter, see § 43-47-5.

RESEARCH REFERENCES

ALR. Uninvited entry into another's living quarters as invasion of privacy. 56 A.L.R.3d 434.

State or municipal liability for invasion of privacy. 87 A.L.R.3d 145.

§ 43-47-17. Right to bring motion for review of order.

Notwithstanding any finding by the court of lack of capacity of the vulnerable person to consent, the vulnerable person or the individual, organization or agency designated to be responsible for the vulnerable person, if any, or the State Department of Public Welfare or the county welfare department, shall have the right to bring a motion in the cause for review of any order pursuant to this chapter.

SOURCES: Laws, 1986, ch. 468, § 9; reenacted, Laws, 1989, ch. 381, § 9; Laws, 2010, ch. 357, § 9, eff from and after July 1, 2010.

Cross References — State Department of Public Welfare as meaning Department of Human Services, see § 43-1-1.

RESEARCH REFERENCES

Practice References. Long-Term Care Advocacy (Matthew Bender).

§ 43-47-18. Sexual battery or fondling of vulnerable person by health care employees or persons in position of trust or authority; penalties.

(1)(a) A person who engages in sexual penetration with a vulnerable person is guilty of sexual battery if the person is a volunteer at, or an employee of, or contracted to work for, a health care facility in which the vulnerable person is a patient or resident.

(b) A person who engages in sexual penetration with a vulnerable person is guilty of sexual battery if the person is in a position of trust or authority over the vulnerable person, including, without limitation, the vulnerable person's teacher, counselor, physician, psychiatrist, psychologist, nurse, certified nursing assistant, direct care worker, technical assistant, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, other relative, caretaker or conservator.

(c) Every person who is convicted of sexual battery under this subsection (1) shall be imprisoned in the custody of the State Department of Corrections for a period of not more than thirty (30) years, and for a second or subsequent such offense shall be imprisoned in the custody of the State Department of Corrections for a period of not more than forty (40) years.

(2)(a) Any person who, for the purpose of gratifying the person's lust, or indulging the person's depraved licentious sexual desires, shall handle, touch or rub with hands or any part of the person's body or any member thereof, any vulnerable person, with or without the vulnerable person's consent, when the person is a volunteer at, or an employee of, or contracted to work for, a health care facility in which the vulnerable person is a patient or resident, shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or be committed to the custody of the Department of Corrections not less than two (2) nor more than fifteen (15) years, or be punished by both fine and imprisonment, at the discretion of the court.

(b) Any person who, for the purpose of gratifying the person's lust, or indulging the person's depraved licentious sexual desires, shall handle, touch or rub with hands or any part of the person's body or any member thereof, any vulnerable person, with or without the vulnerable person's consent, when the person occupies a position of trust or authority over the vulnerable person, shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or be committed to the custody of the Department of Corrections not less than two (2) nor more than fifteen (15) years, or be punished by both fine and imprisonment, at the discretion of the court. A person in a position of trust or authority over a vulnerable person includes, without limitation, the vulnerable person's teacher, counselor, physician, psychiatrist, psychologist, nurse, certified nursing assistant, direct care worker, technical assistant, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, other relative, caretaker or conservator.

(3) A person is not guilty of any offense under this section if the alleged victim is that person's legal spouse; however, the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.

SOURCES: Laws, 2006, ch. 328, § 2; Laws, 2010, ch. 357, § 10, eff from and after July 1, 2010.

Cross References — Registration of sex offenders, see §§ 45-33-21 et seq.

Sexual battery, generally, see §§ 97-3-95 through 97-3-103.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 43-47-19. Prohibition against abuse, neglect, or exploitation; penalties; relation to other laws.

(1) It shall be unlawful for any person to abuse, neglect or exploit any vulnerable person.

(2)(a) Any person who willfully commits an act or willfully omits the performance of any duty, which act or omission contributes to, tends to contribute to, or results in neglect, physical pain, injury, mental anguish, unreasonable confinement or deprivation of services which are necessary to maintain the mental or physical health of a vulnerable person, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment. Any accepted medical procedure performed in the usual scope of practice shall not be a violation of this subsection.

(b) Any person who willfully exploits a vulnerable person, where the value of the exploitation is less than Two Hundred Fifty Dollars ($250.00), shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed Five Thousand Dollars ($5,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment; where the value of the exploitation is Two Hundred Fifty Dollars ($250.00) or more, the person who exploits a vulnerable person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.

(3) Any person who willfully inflicts physical pain or injury upon a vulnerable person shall be guilty of felonious abuse or battery, or both, of a vulnerable person and, upon conviction thereof, may be punished by imprisonment in the State Penitentiary for not more than twenty (20) years.

(4) For any third or subsequent misdemeanor conviction of any person violating any part of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and shall be sentenced to not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections and shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00).

(5) Nothing contained in this section shall prevent proceedings against a person under any statute of this state or municipal ordinance defining any act as a crime or misdemeanor.

SOURCES: Laws, 1986, ch. 468, § 10; reenacted, Laws, 1989, ch. 381, § 10; Laws, 1990, ch. 493, § 6; Laws, 2001, ch. 603, § 4; Laws, 2003, ch. 558, § 2; Laws, 2010, ch. 357, § 11; Laws, 2011, ch. 365, § 1; Laws, 2012, ch. 439, § 2, eff from and after July 1, 2012.

Cross References — Additional penalties, see § 43-47-37.

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Protection from Domestic Abuse Law and domestic violence shelters, see §§ 93-21-1 et seq. and 93-21-101 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. Constitutionality.
3. Jury instruction.
4. Double jeopardy.

1. In general.

Because the Mississippi Vulnerable Adults Act addresses only willful acts or omissions that injure vulnerable adults, they cannot be employed to establish the standard of care applicable in a negligence suit. Mariner Health Care, Inc. v. Estate of Edwards, 964 So. 2d 1138 (Miss. 2007).

Investigator's report did not mention whether defendant's elderly mother was in pain, however, in defendant's sworn guilty plea petition, defendant stated that defendant's acts did constitute willfully inflicting pain and injury upon defendant's mother, "by binding and gagging" the victim and then leaving the victim restrained in the house, and that sufficed for defendant's felony conviction under former Miss. Code Ann. § 43-47-19(3) (Rev. 2000). Ward v. State, 879 So. 2d 452 (Miss. Ct. App. 2003), writ of certiorari denied by 882 So. 2d 234, 2004 Miss. LEXIS 1009 (Miss. 2004).

The evidence established that the defendant willfully committed an act of abuse against a vulnerable adult where (1) two witnesses testified to seeing the defendant physically abuse the victim, (2) three additional witnesses testified that they saw fresh bruises on the victim's arm immediately subsequent to the report of abuse, and (3) the only evidence adduced at trial that would support the defendant's theory of the incident came through her own testimony. Ivy v. State, 736 So. 2d 1050 (Miss. Ct. App. 1999).

2. Constitutionality.

The statute is not unconstitutional on the grounds of vagueness and ambiguity as it gives sufficient guidance as to the meaning of the terms "abuse", "neglect," and "exploitation." Boatner v. State, 754 So. 2d 1184 (Miss. 2000).

3. Jury instruction.

It was improper to convict defendant of using her mother's money without her consent in violation of the Mississippi Vulnerable Adults Act of 1986, Miss. Code Ann. § 43-47-19 because although the indictment sufficiently informed defendant of the crime and the conduct the grand jury believed constituted the crime, the trial court erroneously issued a jury instruction that materially conflicted with the indictment's language; the wording of the indictment suggested that the grand jury believed defendant's use of the money was improper only if the money was used without the mother's consent, but at trial, the State produced no evidence that defendant had used her mother's money without her consent, and several witnesses testified that she, in fact, had obtained her mother's consent. Decker v. State, — So. 3d —, 2011 Miss. LEXIS 296 (Miss. June 16, 2011), opinion withdrawn by 2011 Miss. LEXIS 324 (Miss. June 30, 2011).

In defendant's trial for kidnapping, trial court properly refused a jury instruction for the offense of unreasonable confinement of vulnerable adult because defendant was required to present evidence that he did not commit kidnapping, and defendant failed to present evidence to negate an element of kidnapping. Hager v. State, 996 So. 2d 94 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 374, 2008 Miss. LEXIS 630 (Miss. 2008).

4. Double jeopardy.

Crime of sexual abuse of a vulnerable adult under Miss. Code Ann. § 43-47-19 does not encompass the crime of sexual battery under Miss. Code Ann. § 97-3-95, and a conviction of both offenses does not implicate double jeopardy concerns because the crimes require additional and different elements of proof; specifically, the former offense does not require proof of penetration, while the latter offense does require this proof. Additionally, abuse of a vulnerable adult requires proof that defendant willfully inflicted physical pain or injury upon a vulnerable adult, while sexual battery has no such requirement; there are additional differences in that sexual battery does not require that the victim's abilities to provide for his or her protection from sexual contact be impaired by the infirmities of aging or that the victim be a patient or resident of a care facility, while the charge of abuse of a vulnerable adult does require this additional element. Simoneaux v. State, 29 So. 3d 26 (Miss. Ct. App. 2009), writ of certiorari denied by 29 So. 3d 774, 2010 Miss. LEXIS 115 (Miss. 2010), writ of certiorari denied by 131 S. Ct. 151, 178 L. Ed. 2d 38, 2010 U.S. LEXIS 6093, 79 U.S.L.W. 3196 (U.S. 2010).

§ 43-47-21. Payment for services; orders to provide custody, care, and maintenance.

At the time the department makes an evaluation of the case reported, in accordance with the provisions of Section 43-47-9, it shall be determined, according to the regulations set by the department, whether the vulnerable person is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such services, they shall be provided at no cost to the recipient of the services. The court may order the department or any public agency to provide for the custody, care and maintenance of such vulnerable person. Provided, however, that the care, custody and maintenance of any vulnerable person shall be within statutory authorization and budgetary means of such institution, facility, agency or department. Notwithstanding any provision to the contrary, it is not the intent of the Legislature through the adoption of this chapter to authorize any court exercising jurisdiction over a vulnerable person to enlarge or bring about the addition of new groups or categories of recipients or to increase the types of care and services for such persons under the Mississippi Medicaid Law, and any court exercising jurisdiction over a vulnerable person shall not, in any way, enter an order against the Division of Medicaid to provide for the custody, care, or maintenance of a vulnerable person who is not otherwise eligible for medical assistance under Section 43-13-115 or services under Section 43-13-117.

SOURCES: Laws, 1986, ch. 468, § 11; reenacted, Laws, 1989, ch. 381, § 11; Laws, 2010, ch. 357, § 12, eff from and after July 1, 2010.

Cross References — Mississippi Medicaid Law, see §§ 43-13-101 et seq.

RESEARCH REFERENCES

Practice References. Long-Term Care Advocacy (Matthew Bender).

§ 43-47-23. Authority to seek cooperation of organizations and agencies.

The department and the court are authorized to seek the cooperation of all public agencies, departments, societies, organizations or agencies having for their object the protection or aid of vulnerable persons. These agencies, departments, societies and organizations shall provide any such assistance as is necessary.

SOURCES: Laws, 1986, ch. 468, § 12; reenacted, Laws, 1989, ch. 381, § 12; Laws, 2001, ch. 603, § 5; Laws, 2010, ch. 357, § 13, eff from and after July 1, 2010.

§ 43-47-25. Immunity of department employees from liability.

Any officer, agent or employee of the department in the good faith exercise of his duties under this chapter shall not be liable for any civil damages as a result of his acts or omissions in rendering assistance or aid to any vulnerable person.

SOURCES: Laws, 1986, ch. 468, § 13; reenacted, Laws, 1989, ch. 381, § 13; Laws, 2010, ch. 357, § 14, eff from and after July 1, 2010.

Cross References — Protection from Domestic Abuse Law and domestic violence shelters, see §§ 93-21-1 et seq. and 93-21-101 et seq.

RESEARCH REFERENCES

ALR. State or municipal liability for invasion of privacy. 87 A.L.R.3d 145.

§ 43-47-27. Adoption of standards, procedures, and guidelines.

The department shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of the provisions of this chapter no later than October 1, 2001.

SOURCES: Laws, 1986, ch. 468, § 14; reenacted, Laws, 1989, ch. 381, § 14; Laws, 2001, ch. 603, § 6, eff from and after July 1, 2001.

§ 43-47-29. Appointment of conservator pursuant to Section 93-13-251.

In addition to the powers granted under the provisions of this chapter, the department is authorized to petition the court under the provisions of Section 93-13-251 for appointment of a conservator for any vulnerable person.

SOURCES: Laws, 1986, ch. 468, § 15; reenacted, Laws, 1989, ch. 381, § 15; Laws, 2010, ch. 357, § 15, eff from and after July 1, 2010.

Cross References — Guardians and conservators, generally, see §§ 93-13-1 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. Pl & Pr Forms (Rev), Guardian and Ward, Forms 11-193 (appointment and qualification of guardian).

9 Am. Jur. Legal Forms 2d, Guardian and Ward §§ 133.10-133.43 (appointment of guardian).

CJS. 39 C.J.S., Guardian and Ward §§ 12 et seq.

Practice References. Long-Term Care Advocacy (Matthew Bender).

§ 43-47-31. Objection to provision of services on privacy grounds; persons receiving treatment by spiritual means; objection to medical treatment.

(1) Nothing in this chapter shall be construed to authorize, permit or require any emergency or protective services in contravention of the stated or implied objection of such person based upon his right of privacy, which is grounded in the federal courts and the courts of this state, except in a situation where the vulnerable person is in imminent danger of serious harm.

(2) Nothing in this chapter shall be construed to mean a person is neglected or in need of emergency or protective services for the sole reason he is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denominations.

(3) Nothing in this chapter shall be construed to authorize, permit or require any medical care or treatment in contravention of the stated or implied objection of such person.

SOURCES: Laws, 1986, ch. 468, § 16; reenacted, Laws, 1989, ch. 381, § 16; Laws, 2001, ch. 603, § 7; Laws, 2010, ch. 357, § 16, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR. Threatening, instituting or prosecuting legal action as invasion of right of privacy. 42 A.L.R.3d 865.

Uninvited entry into another's living quarters as invasion of privacy. 56 A.L.R.3d 434.

State or municipal liability for invasion of privacy. 87 A.L.R.3d 145.

Patient's right to refuse treatment allegedly necessary to sustain life. 93 A.L.R.3d 67.

§ 43-47-33. Education program.

The department shall establish a comprehensive, aggressive program to educate the general public of (a) the existence and provisions of the Mississippi Vulnerable Persons Act of 1986; (b) the duty to report the abuse, neglect or exploitation of any and all vulnerable persons, and (c) criminal sanctions associated with violations of the Mississippi Vulnerable Persons Act.

SOURCES: Laws, 1986, ch. 468, § 17; reenacted, Laws, 1989, ch. 381, § 17; Laws, 2001, ch. 603, § 8; Laws, 2010, ch. 357, § 17, eff from and after July 1, 2010.

§ 43-47-35. Implementation of chapter if federal funds become available.

It is the intent of the Legislature that the department shall implement the provisions of this chapter in the event federal funding is made available therefor under a social services block grant, or in the event any other federal or state funding is made available to provide for protective services for vulnerable persons.

SOURCES: Laws, 1986, ch. 468, § 18; reenacted, Laws, 1989, ch. 381, § 18; Laws, 2001, ch. 603, § 9; Laws, 2010, ch. 357, § 18, eff from and after July 1, 2010.

§ 43-47-37. Reporting of abuse and exploitation of patients and residents of care facilities.

(1) Any person who, within the scope of his employment at a care facility as defined in Section 43-47-5(b), or in his professional or personal capacity, has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, neglect or exploitation shall report immediately the abuse, neglect or exploitation.

(2) The reporting of conduct as required by subsection (1) of this section shall be made:

(a) By any employee of any home health agency, orally or telephonically, within twenty-four (24) hours of discovery, excluding Saturdays, Sundays and legal holidays, to the department and the Medicaid Fraud Control Unit of the Attorney General's office.

(b) By a home health agency, in writing within seventy-two (72) hours of discovery to the department and the Medicaid Fraud Control Unit. Upon initial review, the Medicaid Fraud Control Unit shall make a determination whether or not the person suspected of committing the reported abuse, neglect or exploitation was an employee of the home health agency. If so, the Medicaid Fraud Control Unit shall determine whether there is substantial potential for criminal prosecution, and upon a positive determination, shall investigate and prosecute the complaint or refer it to an appropriate criminal investigative or prosecutive authority. If the alleged perpetrator is not an employee of the home health agency, the department shall investigate and process the complaint or refer it to an appropriate investigative or prosecutive authority.

(c) By all other care facilities, orally or telephonically, within twenty-four (24) hours of discovery, excluding Saturdays, Sundays and legal holidays, to the State Department of Health and the Medicaid Fraud Control Unit of the Attorney General's office.

(d) By all other care facilities, in writing, within seventy-two (72) hours of the discovery, to the State Department of Health and the Medicaid Fraud Control Unit. If, upon initial review by the State Department of Health and the Medicaid Fraud Control Unit, a determination is made that there is substantial potential for criminal prosecution, the unit will investigate and prosecute the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(3) The contents of the reports required by subsections (1) and (2) of this section shall contain the following information unless the information is unobtainable by the person reporting:

(a) The name, address, telephone number, occupation and employer's address and telephone number of the person reporting;

(b) The name and address of the patient or resident who is believed to be the victim of abuse or exploitation;

(c) The details, observations and beliefs concerning the incident;

(d) Any statements relating to incident made by the patient or resident;

(e) The date, time and place of the incident;

(f) The name of any individual(s) believed to have knowledge of the incident;

(g) The name of the individual(s) believed to be responsible for the incident and their connection to the patient or resident; and

(h) Such other information that may be required by the State Department of Health and/or the Medicaid Fraud Control Unit, as requested.

(4) Any other individual who has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, exploitation or any other criminal offense may make a report to the State Department of Health and the Medicaid Fraud Control Unit.

(5)(a) Any individual who, in good faith, makes a report as provided in this section or who testifies in an official proceeding regarding matters arising out of this section shall be immune from all criminal and civil liability. The immunity granted under this subsection shall not apply to any suspect or perpetrator of abuse, neglect or exploitation of any vulnerable person, or of any other criminal act under any statute of this state or municipal ordinance defining any act as a crime or misdemeanor.

(b) No person shall terminate from employment, demote, reject for promotion or otherwise sanction, punish or retaliate against any individual who, in good faith, makes a report as provided in this section or who testifies in any official proceeding regarding matters arising out of this section.

(6) Any care facility that complies in good faith with the requirements of this section to report the abuse or exploitation of a patient or resident in the care facility shall not be sanctioned by the State Department of Health for the occurrence of such abuse or exploitation if the care facility demonstrates that it adequately trained its employees and that the abuse or exploitation was caused by factors beyond the control of the care facility.

(7) Every person who knowingly fails to make the report as required by subsections (1), (2) and (3) of this section or attempts to induce another, by threat or otherwise, to fail to make a report as required by subsections (1), (2) and (3) of this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not exceeding Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment.

(8) Copies of Sections 43-47-7 and 43-47-37 shall be posted prominently in every health care facility.

(9) If, after initial inquiry or investigation, the Medicaid Fraud Control Unit determines that there is reasonable cause to believe that an employee of a home health agency has abused, neglected or exploited a vulnerable person, the unit shall notify the Mississippi State Department of Health of the alleged abuse, neglect or exploitation.

(10) Upon a judicial determination of evidence that an employee of a care facility has abused, neglected or exploited a vulnerable person, the appropriate investigative agency shall immediately provide the following information to the central registry: name, address, birth date, social security number of perpetrator; type of abuse, neglect and or exploitation; name, address, birth date, social security number of victim; and date of incident and report.

SOURCES: Laws, 1990, ch. 493, § 2; Laws, 1991, ch. 431 § 4; Laws, 1996, ch. 351, § 1; Laws, 2001, ch. 603, § 10; Laws, 2010, ch. 357, § 19, eff from and after July 1, 2010.

Cross References — Medicaid Fraud Control Unit, see § 43-13-219.

Additional reporting requirements, see § 43-47-7.

Referral of report of abuse, neglect or exploitation of vulnerable adult in licensed facility to State Department of Health for investigation under this section, see § 43-47-9.

Plan of services pursuant to report filed under § 43-47-7, see § 43-47-11.

Additional penalties, see § 43-47-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Employee termination.

Employee was not terminated for a criminal violation under the Vulnerable Adults Act because there was no reference that was made within the termination notices regarding the employee's conduct in reference to the Act; an employee's acquittal in a criminal case under the act did not provide the basis for a motion for reconsideration. Payne v. Miss. Dep't of Mental Health, 964 So. 2d 582 (Miss. Ct. App. 2007).

ATTORNEY GENERAL OPINIONS

The definition of "care facility" in Section 43-47-5 applies for abuse, neglect, and exploitation reporting and investigating purposes regardless of whether a facility that is required to be licensed is so licensed. Brittain, May 2, 2003, A.G. Op. 03-0702.

Although there is no statutory obligation on the part of the Department of Human Services (DHS) to investigate abuse, neglect and exploitation in a facility that operates as a personal care home but is not licensed by the State Department of Health to operate as such, in limited circumstances, where the alleged perpetrator is not an employee of the home health agency, the DHS has a statutory obligation to investigate and process complaints of abuse, neglect or exploitation or refer same to an appropriate authority. Brittain, May 2, 2003, A.G. Op. 03-0702.

RESEARCH REFERENCES

ALR. Liability for retaliation against at-will employee for public complaints or efforts relating to health or safety. 75 A.L.R.4th 13.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

§ 43-47-39. Vulnerable Persons Training, Investigation and Prosecution Trust Fund created; purpose; funding.

(1) There is created in the State Treasury a special fund to be known as the Vulnerable Persons Training, Investigation and Prosecution Trust Fund. The purpose of the fund shall be to provide funding for the Vulnerable Persons Unit in the Office of the Attorney General to assist in the training of law enforcement officers, judges, district attorneys, state agencies and investigators at the Department of Human Services with regard to issues arising under the Vulnerable Persons Act, and to provide funding for the Vulnerable Persons Unit in the Office of the Attorney General to assist in the investigation and prosecution of statewide offenders who abuse, neglect or exploit vulnerable persons. The fund shall be a continuing fund, not subject to fiscal-year limitations.

(2) Funding shall be provided by assessments collected from violations set out in Section 99-19-73.

SOURCES: Laws, 2005, 2nd Ex Sess, ch. 1, § 1; Laws, 2010, ch. 357, § 20, eff from and after July 1, 2010.

CHAPTER 49

Mississippi Welfare Restructuring Program Act of 1993 [Repealed]

§§ 43-49-1 through 43-49-3. Repealed.

Repealed by Laws, 1997, ch. 316, § 27, eff from and after passage (approved March, 12, 1997).

§ 43-49-1. [Laws, 1993, ch. 614, § 1]
§ 43-49-3. [Laws, 1993, ch. 614, § 2; Laws, 1994, ch. 582, § 4]

Editor's Note — Former § 43-49-1 provided for the citing of this chapter as the "Mississippi Welfare Restructuring Program Act of 1993."

Former § 43-49-3 was entitled: Implementation of required welfare reform components of Federal Family Support Act of 1988; federal funds; Job Opportunity and Basic Skills (JOBS) Training Program; child care, medical, and other assistance.

§§ 43-49-5 through 43-49-7. Repealed.

Repealed by Laws, 1994, ch. 582, § 8, eff from and after July 1, 1994.

§ 43-49-5. [Laws, 1993, ch. 614, § 3, eff from and after passage (approved April 15, 1993)]

§ 43-49-7. [Laws, 1993, ch. 614, § 4, eff from and after passage (approved April 15, 1993)]

Editor's Note — Former Section 43-49-5 was entitled: Waivers to permit application of AFDC and Food Stamp eligibility requirements of Avenues to Self-Sufficiency through Employment and Training Services (ASSETS) Demonstration program.

Former Section 43-49-7 was entitled: Waiver for child assistance incentive program.

§§ 43-49-8 through 43-49-15. Repealed.

Repealed by Laws, 1997, ch. 316, § 27, eff from and after passage (approved March 12, 1997).

§ 43-49-8. [Laws, 1994, ch. 582, § 1; Laws, 1995, ch. 344, § 5]
§ 43-49-9. [Laws, 1993, ch. 614, § 5; Laws, 1994, ch. 582, § 2]
§ 43-49-11. [Laws, 1993, ch. 614, § 6; Laws, 1994, ch. 582, § 3]
§ 43-49-13. [Laws, 1993, ch. 614, § 7]
§ 43-49-15. [Laws, 1993, ch. 614, § 8]

Editor's Note — Former § 43-49-8 provided for conditions of eligibility for AFDC benefits.

Former § 43-49-9 provided for the Work Encouragement Program.

Former § 43-49-11 provided for the Work First Program.

Former § 43-49-13 was entitled: Department of Human Services to prepare waiver requests; authorization to accept and expend monies.

Former § 43-49-15 provided for authorization of the Department of Human Services to request additional waivers.

CHAPTER 51

Family Preservation Act of 1994

SEC.
43-51-1. Short title.
43-51-3. Definitions.
43-51-5. Home Ties Program; planning.
43-51-7. Annual application for available federal funds.
43-51-9. Family preservation services evaluations; annual report.

§ 43-51-1. Short title.

This chapter shall be known and may be cited as the "Family Preservation Act of 1994."

SOURCES: Laws, 1994, ch. 607, § 22, eff from and after July 2, 1994.

§ 43-51-3. Definitions.

As used in this chapter, unless the context clearly requires otherwise, the following words and phrases shall have the meanings respectively ascribed to them in this section:

(a) "Child at imminent risk of placement" means a minor who may be reasonably expected to face, in the near future, commitment to the care or custody of the state as a result of:

(i) Dependency, abuse or neglect;

(ii) Emotional disturbance;

(iii) Family conflict so extensive that reasonable control of the child is not exercised; or

(iv) Delinquency adjudication.

(b) "Home Ties Program" means a program under the State Department of Human Services of family preservation and family support services.

(c) "Family preservation services" means services designed to help families alleviate risks or crises that might lead to out-of-home placement of children. The services may include procedures to maintain the safety of children in their own homes, support to families preparing to reunify or adopt and assistance to families in obtaining services and other sources of support necessary to address their multiple needs in a culturally sensitive environment.

(d) "Family support services" means preventive community-based activities designed to alleviate stress and to promote parental competencies and behaviors that will increase the ability of families to successfully nurture their children and will enable families to use other resources and opportunities available in the community. These services may include supportive networks designed to enhance child-rearing abilities of parents and to help compensate for the increased social isolation and vulnerability of families. Examples of these services and activities include: respite care for parents and other caregivers; early developmental screening of children to assess the needs of these children and assistance in obtaining specific services to meet their needs; mentoring, tutoring and health education for youth; and a range of center-based activities, such as informal interactions in drop-in centers and parent support groups, and home visiting programs.

SOURCES: Laws, 1994, ch. 607, § 23, eff from and after July 2, 1994.

§ 43-51-5. Home Ties Program; planning.

(1) The State Department of Human Services in conjunction with the State Department of Education shall engage in a comprehensive planning process for the Home Ties Program to develop, coordinate and implement a meaningful and responsive program of family support and family preservation services. The scope of planning shall address child welfare, housing, mental health, primary health, education, juvenile justice, community-based programs providing family support and family preservation services and other social programs that service children at imminent risk of placement and their families. In developing the plan, the department, in its discretion, may invite active participation from local consumers, practitioners, researchers, foundations, mayors, members of the Legislature and any available federal regional staff.

(2) The Home Ties Program shall be developed as a pilot program for a period of five (5) years in accordance with federal guidelines promulgated by the United States Department of Health and Human Services. The State Department of Human Services shall oversee development of requests for proposals, contracting for services and program evaluation.

(3) In addition to the family preservation and family support services defined in Section 43-51-3, the Home Ties Program shall offer a wide range of services, included, but not limited to, the following: crisis resolution; teaching measures to prevent the repeated occurrence of abuse, neglect and/or family conflict; education in parenting skills, child development, communication, negotiations and home maintenance skills; child and family advocacy; and job-readiness training.

SOURCES: Laws, 1994, ch. 607, § 24, eff from and after July 2, 1994.

§ 43-51-7. Annual application for available federal funds.

The State Department of Human Services shall apply annually for any available federal funds that may be used to defray the planning and service expenses, in all or in part, of the Home Ties Program, including, but not limited to, funds available under the Child and Family Services Program of the Social Security Act.

SOURCES: Laws, 1994, ch. 607, § 25, eff from and after July 2, 1994.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

§ 43-51-9. Family preservation services evaluations; annual report.

The State Department of Human Services shall conduct ongoing evaluations of family preservation services and shall file a report, on or before December 31 of each year, with the Governor, the Chairmen of the Public Health and Welfare and Judiciary Committees of the Senate and House of Representatives and the Chairman of the Select Committee on Juvenile and School-related Crimes of the House of Representatives. The report shall include the following information for the preceding fiscal year:

(a) A description of the family support and family preservation services included in the comprehensive plan;

(b) The number of families receiving services through the joint program;

(c) The number of children at imminent risk of placement before initiation of service in families receiving services;

(d) Among those children identified in paragraph (b), the number of children placed in foster care, group homes and other facilities outside the home;

(e) The average cost of services provided under the program;

(f) The estimated cost of out-of-home placement, through foster care, group homes or other facilities, which would otherwise have been expended on behalf of those children who successfully remain united with their families as a result of the program, based on average lengths of stay and average costs of out-of-home placements;

(g) The number of children who remain unified with their families for one (1), two (2) and three (3) years, respectively, after receiving services;

(h) An overall statement of the achievements and progress of the program during the preceding year along with recommendations for improvement; and

(i) A description of all applications submitted by the department for federal funding and the amount of any grants made based upon the applications.

SOURCES: Laws, 1994, ch. 607, § 26, eff from and after July 2, 1994.

CHAPTER 53

Mississippi Leadership Council on Aging

Sec.
43-53-1. Legislative findings.
43-53-3. Membership, powers, duties and responsibilities of Leadership Council on Aging.
43-53-5. Coordination of police and related services to elderly.
43-53-7. Coordination, development and delivery of training to law enforcement professionals in TRIAD program.
43-53-9. Council on Aging not to impede Vulnerable Adults Act.
43-53-11. Mississippi Leadership Council on Aging Fund.

§ 43-53-1. Legislative findings.

The Legislature hereby finds and declares that there are many efforts currently under way that seek to forge partnerships to coordinate criminal justice and social services approaches to victimization of senior citizens. The TRIAD program, sponsored by the National Sheriffs' Association (NSA), the International Association of Chiefs of Police (IACP) and the American Association of Retired Persons (AARP), is one such effort. This effort recognizes that senior citizens have the same fundamental desire as other members of our society to live freely, without fear or restriction due to the criminal element, and that the state should seek to expand efforts to reduce crime against this growing and uniquely vulnerable segment of our population.

It is the intent of the Legislature, therefore, to promote a coordinated effort among law enforcement and social services agencies to stem the tide of violence against senior citizens and to support media and non-media strategies aimed at increasing both public understanding of the problem and the senior citizens' skills in preventing crime against themselves and their property, and to address the problem of crime against senior citizens in a systematic and effective manner by promoting and expanding collaborative crime prevention programs, such as the TRIAD model, that assist law enforcement agencies and senior citizens in implementing specific strategies for crime prevention, victim assistance, citizen involvement and public education.

SOURCES: Laws, 1996, ch. 435, § 1, eff from and after July 1, 1996.

§ 43-53-3. Membership, powers, duties and responsibilities of Leadership Council on Aging.

(1) Establishment of the council. There is hereby established within the Office of the Governor the Mississippi Leadership Council on Aging, hereafter in this chapter the "council."

(2) Membership of the council:

(a) The council shall consist of a representative of the Department of Public Safety to be appointed by the Commissioner of Public Safety;

(b) Two (2) representatives of the Mississippi Sheriff's Association, to be elected by the Sheriff's Association;

(c) Two (2) representatives of the Mississippi Association of Chiefs of Police, to be elected by the Association of Chiefs of Police;

(d) One (1) representative of the Mississippi Department of Human Services, Division of Aging and Adult Services, to be appointed by the Executive Director of the Department of Human Services;

(e) Two (2) representatives of the American Association of Retired Persons, to be elected by Mississippi AARP Executive Committee;

(f) Two (2) representatives from community volunteer councils on aging, to be appointed by the Office of the Governor;

(g) One (1) representative from the Office of the Attorney General, Crime Prevention Unit, to be appointed by the Attorney General; and

(h) Two (2) representatives from the aging advocate network, to be appointed by the Lieutenant Governor.

(3) In the performance of its functions, the council shall, to the extent possible, solicit the participation and involvement of retired law enforcement personnel.

(4) The council shall elect a chairperson by a majority vote of the membership.

(5) Members of the council shall serve until the appropriately designated person in each representative organization selects another representative, and all persons on the council shall be subject to the advice and consent of the Senate.

(6) Membership on the council shall not constitute the holding of a public office, and members of the council shall not be required to take and file oaths of office before serving on the committee.

(7) The members of the committee shall receive no compensation for their services as members.

(8) No member of the council shall be disqualified from holding any public office or employment nor shall any member forfeit any employment or office by reason of his membership on the council.

(9) The council shall meet as often as deemed necessary, but in no event less than four (4) times annually. The chairman shall call the first meeting of the council no later than October 1996. A majority of the membership shall constitute a quorum for conducting business.

SOURCES: Laws, 1996, ch. 435, § 2, eff from and after July 1, 1996.

§ 43-53-5. Coordination of police and related services to elderly.

(1) The council shall advise the Department of Public Safety, sheriffs and other local law enforcement agencies, senior advocates chosen in consultation with the Area Agencies on Aging, and American Association of Retired Persons representatives in the study and evaluation of "TRIAD Programs" as an effective response to the problems of crime against elderly persons.

(2) The council may consult with experts, service providers, and representative organizations engaged in the protection of the elderly and may recommend the development of "TRIAD Programs" in the State of Mississippi to assist the elderly to avoid criminal victimization through the coordinated efforts of state, county and local law enforcement agencies and organizations which provide services for the elderly.

(3) The council may recommend policies and programs to assist law enforcement agencies to implement "TRIAD Programs," including training and crime prevention standards and technical assistance. Such recommendations may include the following:

(a) The establishment of a statewide central clearinghouse for information and education materials.

(b) The development of innovative community police programs for the elderly.

(c) The provision of assistance by the council in the development and delivery of training for law enforcement professionals involved in the "TRIAD Programs," including, but not limited to, the following subjects:

(i) Crimes against the elderly and the protection of elderly persons.

(ii) Police sensitivity to the needs of elderly persons as victims, witnesses or victims of "vicarious victimization," which impairs the quality of life.

(iii) Availability of social and human services.

(d) The provision of assistance to state and local law enforcement officials and to nonprofit corporations and organizations with respect to effective policies and responses to crime against elderly persons.

(e) The promotion and facilitation of cooperation among state agencies and local government.

(f) The promotion of effective advocacy services to protect and assist elderly persons and elderly victims of crime.

(g) The evaluation of the relationship between crimes against elderly persons and other problems confronting elderly persons and the making of recommendations for effective policy responses.

(h) The collection of statistical data and research.

(i) The establishment of rules and regulations necessary to carry out the above.

For purposes of this chapter, "TRIAD Program" means the triad cooperative model developed by the American Association of Retired Persons, the National Sheriff's Association and the International Association of Chiefs of Police, which calls for the participation of the sheriff, at least one (1) police chief, at least one (1) member of the American Association of Retired Persons and a representative of at least one (1) senior citizens' organization within a county and may include participation by coalitions of law enforcement, victims' services and senior citizen advocate organizations. If there is not both a sheriff and a police chief in a county or if the sheriff or a police chief does not participate, a TRIAD may include in the place of the sheriff or police chief other members of the criminal justice system, such as a district attorney.

SOURCES: Laws, 1996, ch. 435, § 3, eff from and after July 1, 1996.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Fraternal Orders and Benefit Societies § 3.

40 Am. Jur. 2d, Housing Laws and Urban Redevelopment § 6.

48A Am. Jur. 2d, Labor and Labor Relations §§ 3032, 3033.

§ 43-53-7. Coordination, development and delivery of training to law enforcement professionals in TRIAD program.

In addition to any other powers conferred upon the council elsewhere or by other law, the council shall assist in the coordination, development and delivery of training to law enforcement professionals involved in the "TRIAD Programs," including, but not limited to, the following subjects:

(a) Crimes against the elderly and the protection of elderly persons.

(b) Police sensitivity to the needs of elderly persons as victims, as witnesses or as victims of "vicarious victimization" which conditions impair their quality of life.

(c) Monitoring of all reported cases of elder abuse within the state.

(d) Availability of social/human services.

SOURCES: Laws, 1996, ch. 435, § 4, eff from and after July 1, 1996.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Fraternal Orders and Benefit Societies § 3.

40A Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 7 et seq.

48A Am. Jur. 2d, Labor and Labor Relations §§ 3032, 3033.

§ 43-53-9. Council on Aging not to impede Vulnerable Adults Act.

The establishment of the Mississippi Leadership Council on Aging shall not impede the intent of the Vulnerable Adults Act of 1986 as provided in Section 43-47-1, et seq.

SOURCES: Laws, 1996, ch. 435, § 5, eff from and after July 1, 1996.

Editor's Note — "Mississippi Vulnerable Adults Act," referred to in this section, was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357.

§ 43-53-11. Mississippi Leadership Council on Aging Fund.

Assessments collected under Section 99-19-73(1) for the Mississippi Leadership Council on Aging Fund, and any contributions, grants or donations from any other source, shall be deposited in a special fund created in the State Treasury and so designated. Monies deposited in this fund shall be expended by the Mississippi Leadership Council on Aging as authorized and appropriated by the Legislature to defray the cost of coordinating crime prevention for the elderly and carrying out such other duties and responsibilities as provided in this chapter. The fund shall be a non-lapsing, revolving special trust fund, and interest earned on the principal shall be credited to the fund. Expenditures from the fund shall be made upon requisition by the Mississippi Leadership Council on Aging.

SOURCES: Laws, 1997, ch. 574, § 1, eff from and after July 2, 1997.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony or misdemeanor violations, see §§ 99-19-73.

CHAPTER 55

Mississippi Commission for National and Community Service

Sec.
43-55-1. Definitions.
43-55-3. Establishment and designation of Commission for National Community Service.
43-55-5. Membership of commission; tenure; vacancies.
43-55-7. Commission functions.
43-55-9. Composition of commission.
43-55-11. Commission staff; executive director.
43-55-13. Duties of commission.
43-55-15. Prohibition against carrying out national service program receiving assistance.
43-55-17. Delegation of nonpolicy making duties.
43-55-19. Commission to comply with requirements of federal law.
43-55-21. State cooperation with commission.
43-55-23. Administration and support of commission functions; application, receipt, and expenditure of funds, grants, and services.
43-55-25. Availability of funds.
43-55-27. Repealed.
43-55-29. Mississippi Commission for Volunteer Service Fund.

§ 43-55-1. Definitions.

As used in this chapter:

(a) "Commission" means the Mississippi Commission for Volunteer Service established in Section 43-55-3.

(b) "Community-based agency" means that term as defined in Section 101 of Title I, 42 USCS 12511.

(c) "Corporation" means the Corporation for National and Community Service established in Section 191 of Title I, 42 USCS 12651.

(d) "National service laws" means that term as defined in Section 101 of Title I, 42 USCS 12511.

(e) "Out-of-school youth" means that term as defined in Section 101 of Title I, 42 USCS 12511.

(f) "Title I" means Title I of the National and Community Service Act of 1990, Public Law 101-610.

SOURCES: Laws, 1996, ch. 438, § 1; reenacted without change, Laws, 1997, ch. 355, § 1, eff from and after passage (approved March 17, 1997).

Federal Aspects — National and Community Service, generally, see 42 USCS §§ 12501 et seq.

§ 43-55-3. Establishment and designation of Commission for National Community Service.

The Mississippi Commission for National and Community Service, established by Executive Order No. 1994-742, is hereby designated as the State

Commission for Volunteer Service within the institutions of higher learning, established to encourage community service and volunteer participation as a means of community and state problem-solving; to promote and support voluntary citizen involvement in government and private programs throughout the state; to provide a means by which the state may develop a coordinated, unified plan in response to the National and Community Service Act of 1990, as amended by the National and Community Service Trust Act of 1993; to develop a long-term, comprehensive vision and plan of action for community service initiatives in Mississippi primarily focused in the areas of education, public safety, human needs and the environment; and to serve as the state's liaison to national and state organizations that support its mission.

SOURCES: Laws, 1996, ch. 438, § 2; reenacted without change, Laws, 1997, ch. 355, § 1, eff from and after passage (approved March 17, 1997).

Cross References — Institutions of higher learning generally, see §§ 37-101-1 et seq.

Federal Aspects — National and Community Service Act of 1990, see 42 USCS §§ 12501 et seq.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. 2d, Civil Rights § 271.

18B Am. Jur. 2d, Corporations § 1847.

48 Am. Jur. 2d, Labor and Labor Relations § 734.

83 Am. Jur. 2d, Zoning and Planning § 842.

§ 43-55-5. Membership of commission; tenure; vacancies.

(1) Members of the Commission for Volunteer Service shall be appointed by the Governor. The commission shall consist of no fewer than fifteen (15) and no more than twenty-five (25) members.

(2) The commission members shall include as voting members, except as otherwise indicated, at least one (1) of each of the following:

(a) An individual with expertise in the educational, training, and developmental needs of youth, particularly disadvantaged youth.

(b) An individual with experience in promoting service and volunteerism among older adults.

(c) A representative of a community-based agency.

(d) The superintendent of the State Department of Education, or his or her designee.

(e) A representative of local government.

(f) A representative of local labor organizations.

(g) A representative of business.

(h) An individual between the ages of sixteen (16) and twenty-five (25) who is a participant or supervisor in a program as defined in Section 101 of Title I, 42 USCS 12511.

(i) A representative of a national service program described in Section 122(a) of Title I, 42 USCS 12572.

(j) The employee of the corporation designated under Section 195 of Title I, 42 USCS 12651f, as the representative of the corporation in this state, as a nonvoting member.

(3) In addition to the members described in subsection (2), the commission may include as voting members any of the following:

(a) Local educators.

(b) Experts in the delivery of human, educational, environmental, or public safety services to communities and persons.

(c) Representative of Native American tribes.

(d) Out-of-school youth or other at-risk youth.

(e) Representatives of entities that receive assistance under the Domestic Volunteer Service Act of 1973, Public Law 93-113, 87 Stat. 394.

(f) A member of the Board of Trustees of State Institutions of Higher Learning.

(4) Not more than twenty-five percent (25%) of the voting commission members shall be officers or employees of this state. The Governor may appoint additional officers or employees of state agencies operating community service, youth service, education, social service, senior service, and job training programs, as nonvoting, ex officio members of the commission.

(5) The Governor shall ensure, to the maximum extent possible, that the commission membership is diverse with respect to race, ethnicity, age, gender, and disability characteristics.

(6) Except as provided in this subsection, members of the commission shall serve for staggered three-year terms expiring on October 1. The members constituting the Mississippi Commission for Volunteer Service under Executive Order No. 1994-742 on March 28, 1996, shall serve on the commission for the remainder of the terms for which they were appointed. Of the additional members, the Governor shall appoint one-third (⅓) of the initial members for a term of one (1) year; one-third (⅓) for a term of two (2) years; and one-third (⅓) for a term of three (3) years. Following expiration of these initial terms, all appointments shall be for three-year renewable terms. Members of the commission may not serve more than two (2) consecutive terms.

(7) A vacancy on the commission shall be filled in the same manner as the original appointments, and any member so appointed shall serve during the remainder of the term for which the vacancy occurred. The vacancy shall not affect the power of the remaining commission members to execute the duties of the commission.

SOURCES: Laws, 1996, ch. 438, § 3; reenacted and amended, Laws, 1997, ch. 355, § 3, eff from and after passage (approved March 17, 1997).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation clarified a date appearing in (6). The words "on the day before the effective date of this chapter" were changed to "March 28, 1996." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Federal Aspects — Domestic Volunteer Service Act of 1973, Public law 93-113, 87 Stat. 394, is codified as 42 USCS §§ 4950 et seq.

§ 43-55-7. Commission functions.

(1) The voting members of the commission shall elect one (1) of the voting members to serve as chairperson of the commission. The voting members of the commission may elect other officers from among the members of the commission.

(2) The commission shall meet quarterly. However, the commission shall meet more frequently at the call of the chairperson or if requested by five (5) or more members.

(3) A majority of the members of the commission constitutes a quorum for the transaction of business at a meeting of the commission. A majority of the voting members present and serving are required for official action of the commission.

(4) Except as provided in subsection (5), a voting member of the commission shall not participate in the administration of the grant program described in Section 43-55-13(s), including any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of assistance or such positions, to any program or entity if both of the following apply:

(a) A grant application relating to the grant program is pending before the commission.

(b) The application was submitted by a program or entity of which a member is, or in the one-year period before the submission of such application was, an officer, director, trustee, full-time volunteer, or employee.

(5) If, as a result of the operation of subsection (4), the number of voting members of the commission is insufficient to establish a quorum for the purpose of administering the grant program described in Section 43-55-13(s), the voting members excluded from participation by subsection (4) may participate in the administration of the grant program, to the extent permitted by regulations issued by the corporation under Section 193A(b)(11) of Title I, 42 USCS 12651d.

(6) Subsection (4) does not limit the authority of any voting member of the commission to participate in either of the following:

(a) The discussion of, and hearing and forums on the general duties, policies, and operations of, the commission or the general administration of the grant program described in Section 43-55-13(s).

(b) Similar general matters relating to the commission.

(7) The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act.

(8) A writing prepared, owned, used, in possession of, or retained by the commission in the performance of an official function is subject to the Freedom of Information Act.

SOURCES: Laws, 1996, ch. 438, § 4; reenacted without change, Laws, 1997, ch. 355, § 4, eff from and after passage (approved March 17, 1997).

Federal Aspects — Freedom of Information Act, see 5 USCS § 552.

§ 43-55-9. Composition of commission.

Members of the commission shall serve without compensation. However, members of the commission may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the commission.

SOURCES: Laws, 1996, ch. 438, § 5; reenacted without change, Laws, 1997, ch. 355, § 5, eff from and after passage (approved March 17, 1997).

§ 43-55-11. Commission staff; executive director.

The commission shall have staff necessary for the commission to perform its functions. The commission staff shall include an executive director. The executive director shall report directly to the commission for the purpose of giving and making recommendations on programs and laws related to volunteerism and community service.

SOURCES: Laws, 1996, ch. 438, § 6; reenacted without change, Laws, 1997, ch. 355, § 6, eff from and after passage (approved March 17, 1997).

§ 43-55-13. Duties of commission.

The commission shall do all of the following:

(a) Promote increased coordination, visibility, and support for volunteers of all ages, especially youth and senior citizens, and community service in meeting the unmet needs of communities.

(b) Ensure that its funding decisions meet all federal and state requirements.

(c) Recommend innovative, creative, statewide service programs to increase volunteer participation in all age groups and community-based problem solving among diverse participants.

(d) Develop and implement a centralized system for obtaining information and technical support concerning volunteerism and community service recruitment, projects, training methods, materials, and activities throughout this state. The commission shall provide the information and support upon request.

(e) Promote interagency collaboration to maximize resources and develop a model of such collaboration on the state level.

(f) Provide public recognition and support of volunteer efforts that address community needs by individuals, by private sector organizations and businesses, and partnerships between the public and private sectors.

(g) Stimulate increased community awareness of the effects of volunteer services in this state.

(h) Utilize local, state and federal resources to initiate, strengthen, and expand quality service programs.

(i) Serve as this state's representative to national and state organizations that support the commission's mission.

(j) Prepare for this state a national three-year service plan that is developed through an open and public process that provides maximum participation and input from national service programs in this state and other interested members of the public. The plan shall be updated annually and contain information that the commission considers appropriate or the corporation requires. The plan shall ensure outreach to diverse community-based agencies that serve under-represented populations, by either using established state networks and registries or establishing these networks and registries.

(k) Prepare this state's financial assistance applications under Section 117B of Title I, 42 USCS 12543, and Section 130 of Title I, 42 USCS 12582.

(*l*) Assist in the preparation of the Department of Education's application for assistance under the Domestic Volunteer Service Act of 1973, Public Law 93-113, 87 Stat. 394.

(m) Prepare this state's application under Section 130 of Title I, 42 USCS 12582, for the approval of service positions that include the national service educational award described in Division D of Title I, 42 USCS 12601 to 12604.

(n) Make recommendations to the corporation with respect to priorities for programs receiving assistance under the Domestic Volunteer Service Act of 1973, Public Law 93-113, 87 Stat. 394.

(o) Make technical assistance available to enable applicants for assistance under Section 121 of Title I, 42 USCS 12571, to plan and implement service programs and to apply for assistance under the national service laws, using information and materials available through a clearing house established under Section 198A of Title I, 42 USCS 12653a, if appropriate.

(p) Assist participants in national service programs that receive assistance under Section 121 of Title I, 42 USCS 12571, in attaining health care and child care under Section 140 of Title I, 42 USCS 12594.

(q) Develop a state system for the recruitment and placement of participants in programs that receive assistance under the national service laws.

(r) Disseminate information about national service programs that receive assistance under the national service positions.

(s) Use assistance provided under Section 121 of Title I, 42 USCS 12571, to administer this state's grant program in support of national service programs including the selection, oversight, and evaluation of grant recipients.

(t) Develop projects, training methods, curriculum materials, and other materials and activities related to national service programs that receive assistance directly from the corporation or from the state using assistance provided under Section 121 of Title I, for use by such programs upon request.

(u) Establish policies and procedures for the use of federal funds received under Title I of the national service laws.

(v) Coordinate its functions, including recruitment, public awareness, and training activities, with any division of the Corporation for National and Community Service.

SOURCES: Laws, 1996, ch. 438, § 7; reenacted without change, Laws, 1997, ch. 355, § 7, eff from and after passage (approved March 17, 1997).

Cross References — Participation by voting member of commission in grant program, see § 43-55-7.

Federal Aspects — Domestic Volunteer Service Act of 1973, Public Law 93-113, 87 Stat. 394, is codified as 42 USCS §§ 4950 et seq.

§ 43-55-15. Prohibition against carrying out national service program receiving assistance.

The commission shall not directly carry out any national service program that receives assistance under Section 121 of Title I, 42 USCS 12571.

SOURCES: Laws, 1996, ch. 438, § 8; reenacted without change, Laws, 1997, ch. 355, § 8, eff from and after passage (approved March 17, 1997).

§ 43-55-17. Delegation of nonpolicy making duties.

Subject to requirements prescribed by the corporation, the commission may delegate nonpolicy making duties to a state agency or to a public or private nonprofit organization.

SOURCES: Laws, 1996, ch. 438, § 9; reenacted without change, Laws, 1997, ch. 355, § 9, eff from and after passage (approved March 17, 1997).

§ 43-55-19. Commission to comply with requirements of federal law.

The commission shall comply with all requirements of federal law, including but not limited to requirements of coordination with other state agencies or with volunteer service programs.

SOURCES: Laws, 1996, ch. 438, § 10; reenacted without change, Laws, 1997, ch. 355, § 10, eff from and after passage (approved March 17, 1997).

§ 43-55-21. State cooperation with commission.

State departments and agencies shall cooperate with the commission in the performance of its functions.

SOURCES: Laws, 1996, ch. 438, § 11; reenacted without change, Laws, 1997, ch. 355, § 11, eff from and after passage (approved March 17, 1997).

§ 43-55-23. Administration and support of commission functions; application, receipt, and expenditure of funds, grants, and services.

(1) The institutions of higher learning and the Office of the Governor shall provide necessary administrative and staff support services to the State Commission for Volunteer Service. Additional support services may be provided, including, but not limited to, the use of office space, furniture and equipment, motor vehicles, travel and other related services. The commission shall employ an executive director, who shall be initially designated by the Governor. The executive director shall employ such staff as is necessary to carry out the provisions of this chapter. Future executive directors shall be selected by the commission.

(2) The commission may procure information and assistance from the state or any subdivision, municipal corporation, public officer, or governmental department or agency thereof. All agencies, officers, and political subdivisions of the state or municipal corporations shall provide the office with all relevant information and reasonable assistance on any matters of research within their knowledge or control.

(3) The commission may apply for, receive, and expend funds, grants, and services from local, state, or federal government, or any of their agencies, or any other public or private sources and is authorized to use funds derived from these sources for purposes reasonable and necessary to carry out the purposes of this chapter. The commission also may expend moneys, upon appropriation by the Legislature, from the Mississippi Commission for Volunteer Service Fund created in Section 43-55-29.

(4) The commission shall submit its budget request through the Board of Trustees of State Institutions of Higher Learning. Such request shall be submitted by the board of trustees as a separate and distinct request made on behalf of the commission.

SOURCES: Laws, 1996, ch. 438, § 12; reenacted and amended, Laws, 1997, ch. 355, § 12; Laws, 1997, ch. 580, § 3, eff from and after July 1, 1997.

Joint Legislative Committee Note — Section 12 of ch. 355, Laws of 1997, amended this section from and after passage (approved March 17, 1997). Section 3 of ch. 580, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 3 of ch. 580, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Cross References — Institutions of higher learning generally, see §§ 37-101-1 et seq.

§ 43-55-25. Availability of funds.

All new programs authorized in this chapter are subject to the availability of funds specifically appropriated therefor by the Legislature.

SOURCES: Laws, 1996, ch. 438, § 13; reenacted without change, Laws, 1997, ch. 355, § 13, eff from and after passage (approved March 17, 1997).

§ 43-55-27. Repealed.

Repealed by Laws, 1997, ch. 355, § 14, eff from and after passage (approved March 17, 1997).

[Laws, 1996, ch. 438, § 14]

Editor's Note — Former § 43-55-27 provided for the repeal of §§ 43-55-1 through 43-55-25.

§ 43-55-29. Mississippi Commission for Volunteer Service Fund.

There is established in the State Treasury a fund known as the "Mississippi Commission for Volunteer Service Fund" (hereinafter referred to as "fund"). The fund shall consist of monies obtained from contributions made pursuant to Section 27-7-90, and from the additional fees collected under Section 27-19-56.16. Monies in the fund, upon appropriation by the Legislature, may be expended by the Mississippi Commission for Volunteer Service, established in Section 43-55-3, Mississippi Code of 1972, to carry out the purposes of Sections 43-55-1 through 43-55-27, Mississippi Code of 1972. Unexpended amounts remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund.

SOURCES: Laws, 1997, ch. 580, § 2; Laws, 2000, ch. 536, § 3, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The subsection "(1)" designation was deleted from the beginning of the section (the section had a (1) but no (2)). The Joint Committee ratified the correction at its September 18, 2000, meeting.

Editor's Note — Section 43-55-27 referred to in this section was repealed by Laws of 1997, ch. 355, § 14, effective from and after passage (approved March 17, 1997).

Cross References — Contribution to Mississippi Commission for Volunteeer Service Fund from State income tax refund, see § 27-7-90.

Special license tags or plates for Mississippi Commission for Volunteer Service Fund supporters, see § 27-19-56.16.

CHAPTER 57

Comprehensive Plan for Provision of Services to Disabled Persons [Repealed]

Sec.
43-57-1 through 43-57-11. Repealed.

§§ 43-57-1 through 43-57-11. Repealed.

Repealed by operation of law of § 43-57-11, Laws, 2001, ch. 469, § 6, effective from and after July 1, 2003.

§ 43-57-1. [Laws, 2001, ch. 469, § 1, eff from and after passage (approved Mar. 23, 2001.)]

§ 43-57-3. [Laws, 2001, ch. 469, § 2, eff from and after passage (approved Mar. 23, 2001.)]

§ 43-57-5. [Laws, 2001, ch. 469, § 3, eff from and after passage (approved Mar. 23, 2001.)]

§ 43-57-7. [Laws, 2001, ch. 469, § 4, eff from and after passage (approved Mar. 23, 2001.)]

§ 43-57-9. [Laws, 2001, ch. 469, § 5, eff from and after passage (approved Mar. 23, 2001.)]

§ 43-57-11. [Laws, 2001, ch. 469, § 6, eff from and after passage (approved Mar. 23, 2001.)]

Editor's Note — Former § 43-57-1 was entitled: "Statement of purpose."

Former § 43-57-3 was entitled: "Statewide work group; composition; public input; recommendation for proposed plan."

Former § 43-57-5 was entitled: "Factors to be considered in developing proposed plan."

Former § 43-57-7 was entitled: "Principles to be considered in developing proposed plan."

Former § 43-57-9 was entitled: "Provisions of proposed plan; goal of plan."

Former § 43-57-11 was entitled: "Repeal of Sections 43-57-1 through 43-57-9."

CHAPTER 59

Mississippi Commission on the Status of Women

Sec.	
43-59-1.	Declaration of public policy; purpose.
43-59-3.	Mississippi Commission on the Status of Women established; membership; term; organization; compensation.
43-59-5.	Commission powers and duties.
43-59-7.	Commission to study and act as information center for issues affecting status of women; annual report to Governor and Legislature.
43-59-9.	Interagency council; composition; function; meetings.
43-59-11.	Operating fund.
43-59-13.	Commission purpose is advisory; no cause of action created.

§ 43-59-1. Declaration of public policy; purpose.

It is declared to be the public policy of this state to encourage, promote and foster the success and well-being of its citizens and to offer unobstructed access to such opportunities as exist in order that all Mississippians may realize the quality of life for their families to which they aspire. It is a higher public purpose of state government to ensure that no individual is denied the opportunity to succeed and make positive contributions to Mississippi's quality of life because of gender. It is the intent and purpose of this chapter to create a Commission on the Status of Women.

SOURCES: Laws, 2001, ch. 604, § 1, eff from and after July 1, 2001.

§ 43-59-3. Mississippi Commission on the Status of Women established; membership; term; organization; compensation.

(1) There is created the Mississippi Commission on the Status of Women. The commission shall be nonpartisan, and shall be composed of thirteen (13) members to be appointed, with the advice and consent of the Senate, as follows:

(a) Four (4) members shall be appointed by the Governor, including a current or former food stamps recipient and a single parent;

(b) Three (3) members shall be appointed by the Lieutenant Governor, including a current or former college educator with expertise in women's issues;

(c) Three (3) members shall be appointed by the Speaker of the House of Representatives, including a health care professional knowledgeable in women's health issues; and

(d) Three (3) members shall be appointed by the Attorney General, including a law professor or lawyer with expertise in women's issues.

(2) The members of the commission shall be women and men of recognized ability and achievement who are representative of the ethnic, geographic, socioeconomic and cultural diversity of the population of this state, and who have a proven record of efforts to improve the status of women. The

initial term of office of one (1) member appointed by the Governor shall expire on June 30, 2002. The initial terms of office of the remaining members shall be fixed by the appointing authorities so that the term of office of one (1) member appointed by each appointing authority expires on June 30, 2003, the term of office of one (1) member appointed by each expires on June 30, 2004, and the terms of office of the remaining three (3) members expires on June 30, 2005. After the expiration of the initial terms, the terms of office of all members shall be four (4) years each, from the expiration date of the previous term. A member may not serve for more than two (2) consecutive terms. All vacancies shall be filled by the appointing authority for the unexpired term.

(3) The commission shall organize by electing a chair, vice chair and secretary from among its members for terms of two (2) years each. Any member is eligible for successive elections to office.

(4) A majority of the members of the commission shall constitute a quorum for transacting business.

(5) Members of the commission may be reimbursed for expenses as provided in Section 25-3-41, and may receive per diem as provided in Section 25-3-69.

(6) The Lieutenant Governor, Speaker of the House and Attorney General shall notify the Governor after they have made their appointments. The Governor then shall designate a place and time for the initial organizational meeting of the commission, which meeting must be before October 1, 2001.

SOURCES: Laws, 2001, ch. 604, § 2, eff from and after July 1, 2001.

§ 43-59-5. Commission powers and duties.

The commission shall have the powers and authority necessary to carry out the duties imposed upon it by this chapter, including, but not limited to, the following:

(a) To conduct research and to study issues affecting the status of women in Mississippi;

(b) To advise and consult with the executive and legislative branches on policies affecting the status of women in Mississippi;

(c) To publish periodic reports documenting the legal, economic, social and political status, and other concerns of women in Mississippi;

(d) To assess programs and practices in all state agencies as those programs and practices affect women;

(e) To maintain an office and to acquire on a contractual or other basis any legal, technical and research expertise and support services as the commission may require for the discharge of its duties;

(f) To hold hearings, meetings, conferences and workshops, to make and sign any agreements, and to do or perform any acts that may be necessary, desirable or proper to carry out the purposes of this chapter;

(g) To appoint advisers or advisory committees if the commission determines that the experience or expertise of the advisors or advisory committees is needed for projects of the commission;

(h) To apply for and accept funds, grants, gifts and services from the state or federal government or any of their agencies, or any other public or private source, for the purpose of defraying clerical, administrative and other costs as may be necessary in carrying out the commission's duties under this chapter;

(i) To establish nonprofit entities for the purpose of defraying costs incurred in the performance of the commission's duties; and

(j) To utilize voluntary and uncompensated services of private individuals, agencies and organizations as may be offered and needed.

SOURCES: Laws, 2001, ch. 604, § 3, eff from and after July 1, 2001.

§ 43-59-7. Commission to study and act as information center for issues affecting status of women; annual report to Governor and Legislature.

(1) The commission shall study issues affecting the status of women in Mississippi, including, but not limited to, the following areas:

(a) Women's educational and employment problems, needs and opportunities;

(b) Women's health issues;

(c) The socioeconomic factors that influence the status of women and the development of women's individual potential;

(d) Current or proposed state laws, practices or conditions in regard to the civil, economic and political rights of women, including, but not limited to, pensions, tax requirements, property rights, marriage and dissolution of marriage provisions, domestic violence and other matters affecting the status of women; and

(e) Any other conditions or practices affecting women which impose special limitations or burdens upon them or which tend to limit opportunities available to women.

(2) The commission shall act as an information center on the status of women and women's educational, employment and other related needs, and on current and proposed legislation affecting women. In this capacity, the commission shall serve as a liaison and clearinghouse between government, private interest groups and the general public concerned with services for women, and in this regard, the commission may publish a periodic newsletter, maintain a website and communicate with and provide information in other ways to these constituencies.

(3) The commission shall educate the business, education, state government and local government communities and the general public about the nature and scope of gender discrimination, violence against women, and other matters affecting the status of women in Mississippi.

(4) The commission shall recommend policies and make recommendations to public and private groups and persons concerned with any issue related to improving the status of women. Toward this end, the commission may develop, prepare and coordinate materials, projects or other activities and give techni-

cal and consultative advice. The commission may encourage and help women's organizations, public and private offices and other groups to institute self-help activities designed to meet women's educational, employment and other needs.

(5) The commission shall promote consideration of qualified women for all levels of government positions.

(6) Before November 15 of each year, beginning with November 15, 2002, the commission shall report to the Governor and the Legislature on the commission's activities. The report must include the results of the commission's findings of the preceding year, with recommendations for the removal of such injustices as the commission may find to exist.

SOURCES: Laws, 2001, ch. 604, § 4, eff from and after July 1, 2001.

Editor's Note — The Mississippi Commission on the Status of Women maintains a website at **www.msstatusofwomen.org.**

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 43-59-9. Interagency council; composition; function; meetings.

There is established an interagency council comprised of representatives of state agencies, including, but not limited to, the State Department of Health, State Department of Mental Health, Department of Human Services, State Department of Education, Department of Public Safety, Mississippi Development Authority, Board of Trustees of State Institutions of Higher Learning, Mississippi Community College Board, Attorney General's Office, Secretary of State's Office and Mississippi Department of Corrections. Each of these agencies shall report to the commission annually through its representative, addressing the current health, employment, educational and overall status of women and the agency's actions to improve women's status. The commission, in its discretion, may call a meeting of the full council; however, full council meetings may not be called more frequently than once during a fiscal year.

SOURCES: Laws, 2001, ch. 604, § 5; Laws, 2014, ch. 397, § 59, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in the first sentence and added minor punctuation.

§ 43-59-11. Operating fund.

There is created in the State Treasury a fund into which any public or private funds from any source shall be deposited for the support of the activities of the Commission on the Status of Women.

SOURCES: Laws, 2001, ch. 604, § 6, eff from and after July 1, 2001.

§ 43-59-13. Commission purpose is advisory; no cause of action created.

The purpose of the Commission on the Status of Women shall be advisory with respect to legislation and regulation and shall not conflict with or supplement state or federal laws or regulations or provide a cause of action relating to any matter contained in this chapter.

SOURCES: Laws, 2001, ch. 604, § 7, eff from and after July 1, 2001.

CHAPTER 61

Mississippi Seniors and Indigents Rx Program

Sec.	
43-61-1.	Short title.
43-61-3.	Definitions.
43-61-5.	Legislative intent; establishment of program in Department of Human Services; Office of Aging and Adult Services to play primary role in administering program.
43-61-7.	Assistance to seniors and indigents in accessing pharmaceutical manufacturers' discount cards and pharmaceutical assistance programs; assistance with applications to programs.
43-61-9.	Voluntary sources of funding.
43-61-11.	Annual report.

§ 43-61-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Seniors and Indigents Rx Program."

SOURCES: Laws, 2004, ch. 593, § 9, eff from and after July 1, 2004.

§ 43-61-3. Definitions.

As used in this chapter, the following terms shall have the following meanings:

(a) "Department" means the Department of Human Services.

(b) "Program" means the Mississippi Seniors and Indigents Rx Program established in this chapter.

SOURCES: Laws, 2004, ch. 593, § 10, eff from and after July 1, 2004.

§ 43-61-5. Legislative intent; establishment of program in Department of Human Services; Office of Aging and Adult Services to play primary role in administering program.

(1) The Legislature finds that many low income seniors and other indigents are unaware of bona fide assistance programs that are voluntarily offered by pharmaceutical manufacturers to the elderly and underprivileged. It is the intent of the Legislature to take steps necessary to make it more widely known that such assistance is available and to make it easier for people to apply for that assistance.

(2) The Mississippi Seniors and Indigents Rx Program is established in the Department of Human Services to help seniors and qualified indigents in accessing pharmaceutical manufacturers' discount cards and pharmaceutical assistance programs and to provide seniors and qualified indigents with applications for those programs. The department shall coordinate the operation of the program with the Division of Medicaid, the Department of Mental Health, the State Department of Health and the State Department of Reha-

bilitation Services to insure that the services available under the program are maximized and that paperwork and inconvenience to the seniors and qualified indigents are minimized. The department may develop, maintain and make available an Internet-based application form to the general public and to each of those state agencies so that seniors and qualified indigents may get applications for pharmaceutical assistance programs at the local offices of any of those state agencies. The department may coordinate with pharmaceutical manufacturers to obtain program applications at no cost to the state.

(3) The Office of Aging and Adult Services of the Department of Human Services shall play a primary role in administering the program to seniors in the same way that the office assists in administering programs of the Centers for Medicare and Medicaid Services (CMS).

SOURCES: Laws, 2004, ch. 593, § 11, eff from and after July 1, 2004.

§ 43-61-7. Assistance to seniors and indigents in accessing pharmaceutical manufacturers' discount cards and pharmaceutical assistance programs; assistance with applications to programs.

Subject to appropriation for the program, the department may provide assistance to persons determined to be eligible for services authorized by this chapter. The assistance provided by the department may include:

(a) Assisting seniors and qualified indigents in accessing manufacturers' pharmaceutical assistance program applications; and

(b) Assisting seniors and qualified indigents in applying for manufacturers' pharmaceutical assistance programs.

SOURCES: Laws, 2004, ch. 593, § 12, eff from and after July 1, 2004.

§ 43-61-9. Voluntary sources of funding.

The department may seek and receive voluntary monies from any sources, including federal funds and gifts, which shall be expended for the purposes specified in this chapter. The department also may accept voluntary funding in the form of grants available to build community, public sector and private sector partnerships. The department shall include within the development of the program the assistance of foundations, independent and chain community pharmacists, volunteers, state agencies, community groups, religious groups, area agencies on aging, corporations, hospitals, physicians, and any other entity that can further the intent of the program.

SOURCES: Laws, 2004, ch. 593, § 13, eff from and after July 1, 2004.

§ 43-61-11. Annual report.

The department shall prepare and submit an annual report on the program to the Governor, Lieutenant Governor, Speaker of the House of

Representatives, the Chairman of the Senate Public Health and Welfare Committee and the Chairman of the House Public Health and Human Services Committee. Those reports shall include the number of clients served, the number of prescriptions filled and refilled, and the value of the drugs provided.

SOURCES: Laws, 2004, ch. 593, § 14, eff from and after July 1, 2004.

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Licensing agency.
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  Mississippi home corporation, §43-33-703.
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Real property.
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Requested records.
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Residential child care.
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Safety.
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School.
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Self care.
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Self direction.
  Children under supervision or in custody of human services department, §43-27-101.
Sending agency.
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Sex offense.
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Sexual abuse.
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Shelter.
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Slum.
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Slum area.
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State department.
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State ombudsman.
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State public body.
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